

NEW YORK STATE DEPARTMENT OF HEALTH

**A Request for Proposal for  
a Business Consultant for the Procurement  
of the Fiscal Agent of the Electronic Medicaid System (eMedNY)**

Office of Medicaid Management

FAU # 0508291230

Proposal Opening: May 19, 2006

**DESIGNATED CONTACT:**

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## 1. General Information

### 1.1 Introduction

The purpose of this Request for Proposals (RFP) is to hire a business consultant who will assist the Department of Health, hereafter referred to as Department, in quality assurance (QA) of the current fiscal agent contract and in procuring a contractor for the New York State electronic Medicaid system (eMedNY) and the data warehouse. This RFP is comprised of four phases with Phase I representing the QA of the current fiscal agent contract, Phase II, the fiscal agent RFP preparation, Phase III, the takeover QA monitoring of the fiscal agents during the twelve month takeover period and, Phase IV, the on-going monitoring of the fiscal agent during operations and the transition to a new system for the length of the new fiscal agent contract. The Department reserves the right to not exercise Phase I.

The current eMedNY agreement expires June 30, 2006 with contract extensions available through December 31, 2008. The Department is currently exploring a three year extension of the contract with an end date of June 30, 2009. The business consultant procured under this RFP must complete the procurement process for a fiscal agent in order for the fiscal agent to complete the eMedNY and the data warehouse takeover within twelve months. For this reason, the time allowed for each of the steps of the procurement, including offerors' preparation of proposals, has been limited. Time is of the essence in the performance of the contract activities, and it is imperative that the timeframes and deadlines established for the various tasks be met.

1.1.1 As part of Phase I, the business consultant will be responsible for providing an ongoing critical review and assessment of the performance of the current fiscal agent from the inception of the business consultant contract through the end of the current fiscal agent contract.

1.1.2 As part of Phase II, the business consultant will be responsible for:

1.1.2.1 Presenting options and recommendations to the Department regarding procurement strategies and approaches, including recommendations on whether the Department should adopt a replacement or redesign strategy as well as accommodating the decision of the Department related to handling of the data warehouse or any subsystem or component in the procurement.

1.1.2.2 Presenting options and recommendations to the Department regarding which pricing model to employ for the evaluation and selection components of the RFP process and for the contract (e.g., fixed price, transaction volume based, cost-plus, etc.).

1.1.2.3 Presenting options and recommendations to the Department regarding which evaluation approach to use for the technical and cost components of the RFP process that will encourage a competitive procurement.

- 1.1.2.4 Preparing an RFP to select a fiscal agent who would be responsible for the takeover of the existing eMedNY, with the potential transition to a new system (e.g., enhancements, commercial off-the-shelf software, etc.), including how the procurement of the data warehouse will be handled, currently being operated by Computer Sciences Corporation. This also includes interviewing Department and other appropriate staff to assure that the RFP reflects the current operational state of the system and to solicit suggestions for improving the system.
- 1.1.2.5 Participating and documenting the discussions and decisions resulting from any design sessions that may be required.
- 1.1.2.6 Preparing the Advance Planning Document (APD) and up to five Advance Planning Document Updates (APD-U's). The price of one APD-U multiplied by five and the price of the APD will be evaluated.
- 1.1.2.7 Preparing a Proposal Evaluation Plan. This is required to be completed before the RFP is released.
- 1.1.2.8 Providing any needed procurement assistance to the Department.
- 1.1.2.9 Providing evaluation and selection assistance to the Department.
- 1.1.2.10 Providing contract and negotiation support to the Department.
- 1.1.3 As part of Phase III, the business consultant will be responsible for providing an ongoing critical review and assessment of the performance of both fiscal agents during the twelve month takeover period.
- 1.1.4 As part of Phase IV, the business consultant will be responsible for providing the ongoing review for the operations and transition periods during the remainder of the contract.

The contractor selected as a result of this procurement will be precluded from involvement, in any manner, in the preparation of a proposal on the subsequent RFP for procurement of the eMedNY contract or acting as a subcontractor or vendor to the fiscal agent selected.

The Department reserves the right to not exercise Phase I.

If the incumbent fiscal agent (Computer Sciences Corporation) is awarded the contract for the fiscal agent, the services of the business consultant may not be required for Phase III of this RFP.

## 1.2 Qualifications of Offerors

A qualified offeror should have organizational and individual staff experience in

the following areas or demonstrate the capability to establish a contractual relationship(s) with a subcontractor(s) having such experience:

- 1.2.1 Expertise and experience in advising government agencies on procurement strategies in general and Medicaid related procurement strategies in particular.
- 1.2.2 Expertise and experience in developing MMIS and Medicaid-related requests for proposal (RFP).
- 1.2.3 Expertise and experience in advising state government agencies on obtaining all available federal funding.
- 1.2.4 Expertise and experience in analyzing medical information system and medical program decision support system capabilities.
- 1.2.5 Expertise and experience in advising customers on strategic direction as it relates to technology and information systems.
- 1.2.6 Expertise and experience in analyzing public benefit eligibility systems.
- 1.2.7 Expertise and experience in developing evaluation approaches for technical and cost components of requests for proposals that encourage competitive procurements.
- 1.2.8 Expertise and experience in developing pricing models to employ for the evaluation and selection processes for the contract, e.g., fixed price, transaction volume based, cost-plus, etc.
- 1.2.9 Expertise and experience in developing information systems to support health policy development and health services research.
- 1.2.10 Expertise and experience in systems architecture for a project of the magnitude and complexity of eMedNY and the data warehouse in order to assist the Department in monitoring the actual transition of these systems.
- 1.2.11 Expertise and experience in monitoring operations for a project of the magnitude and complexity of eMedNY and the data warehouse in order to assist the Department in monitoring the operations of these systems.
- 1.2.12 Expertise in advising states on the latest tools and procedures for detecting Medicaid fraud and abuse.

In addition, in order to be considered, an offeror must demonstrate the ability to begin the work described in this RFP immediately after the approval of this contract.

### 1.3 Letter of Intent

Any offeror intending to submit a proposal in response to this RFP should

submit a Letter of Intent to the Project Director, as identified in Section 4.1.2 herein. The Letter of Intent must reference the title of this RFP and should be submitted in accordance with the timetable in Section 5 of this RFP.

The Letter of Intent will allow offerors to automatically receive official responses to questions related to this RFP. Responses to questions will also be posted on the Department website (<http://www.health.state.ny.us>).

#### 1.4 Addendum to RFP

The Department reserves the right to amend this RFP and to direct any offeror to submit proposal modifications addressing subsequent RFP amendments. If it becomes necessary to revise any part of this RFP, addenda will automatically be provided to all prospective offerors who received the initial RFP and submitted a letter of intent as set forth in Section 1.3 herein. Addenda will also be posted on the Department website (<http://www.health.state.ny.us>). A hard copy of addenda can be requested by contacting the Project Director as identified in Section 4.1.2.

#### 1.5 Incurred Costs

The State of New York is not liable for any cost incurred by prospective offerors prior to the approval of an executed contract by the Office of the Comptroller (OSC) of the State of New York. Additionally, no cost will be incurred by the State for any activity by the selected contractor prior to the contract award.

#### 1.6 Disclosure of Proposal Contents

1.6.1 To the extent permitted by law, offerors' proposals will not be disclosed, except for purposes of evaluation, prior to approval by the Comptroller of the resulting contract. All material submitted becomes the property of the Department and may be returned at the Department's discretion. Submitted proposals may be reviewed and evaluated by any person, other than one associated with a competing offeror, designated by the Department. If an offeror believes that any information in its proposal constitutes a trade secret and wishes such information not to be disclosed if requested by a member of the public pursuant to the State Freedom Of Information Law, Article 6, of the Public Officers Law, the offeror shall submit with its proposal a letter specifically identifying by page number, line or other appropriate designation that information which is a trade secret and explaining in detail why such information is a trade secret. Failure by an offeror to submit such a letter with its offer identifying trade secrets shall constitute a waiver by the offeror of any rights it may have under Section 89, Subdivision 5 of the Public Officers Law relating to protection of trade secrets.

1.6.2 Subsequent to the full execution of the contract resulting from this RFP by OSC and upon request, the name of the successful offeror along with the amount of the associated offer will be disclosed to the extent disclosure has not been made previously.

## 1.7 Notice of Award and Debriefing

Subsequent to the evaluation of all proposals received pursuant to this RFP, all offerors will be notified of the acceptance or rejection of their proposals. News releases or any other disclosure relating to this contract award shall not be made by the successful offeror or its agent without the explicit prior written approval of the Department.

The Department will notify all offerors, at or about the time of award, other than the successful offeror of the fact that their proposals were not selected. Each unsuccessful offeror will be given the opportunity to be debriefed by the Department as to why its proposal was not selected. The scope of such debriefings will be limited to the strengths and weaknesses of the individual offeror's proposal.

## 1.8 Prime Contractor's Responsibility

The offeror submitting the successful proposal pursuant to this RFP must assume full responsibility for performance under the resultant contract. The Department retains the right and privilege to approve the use of subcontractors under the contract resulting from this RFP. In any event, the prime contractor (the successful offeror) shall be responsible for all contract performance whether or not subcontractors are utilized. The Department shall consider the selected offeror to be the sole responsible contact with regard to all provisions of the contract resulting from this RFP.

## 1.9 Contacts with Employees

From the release date of this RFP until the resultant contract is approved by OSC, all offeror contacts related to this procurement with Department staff must be authorized by the Project Director.

Prospective offerors may not approach Department personnel with offers of employment during the procurement period. Any offeror who is aware of a Department employee who is considering employment with the offeror must advise the Project Director forthwith.



- 1.10 The following table details the schedule for the RFP process that will culminate in the procurement of a fiscal agent.

Procurement of Fiscal Agent Schedule\*

Business Consultant Contract Start Date	9/18/06
RFP Completion	3/14/07
Contract Reporter Submission	3/26/07
RFP Release	4/2/07
Receipt of Proposals	6/29/07
Proposal Evaluation Completed	11/1/07
Award Announced	11/16/07
Contract Negotiations Completed and Contract Signed	1/14/08
Attorney General's Approval	1/31/08
Office of State Comptroller Approval	7/9/08
Contract Start Date	7/9/08
Takeover Date	7/1/09
Contract End Date	6/30/14

\*Dates are based upon current work schedule and may be subject to change.

## 2. Specifications

Following the award of the contract resulting from this RFP, the successful contractor will be required to meet with the Department's Project Director within thirty (30) business days to review the proposed work plan. A finalized written work plan, acceptable to the Department, will be required within ten (10) business days following that meeting.

Additionally, the contractor must be capable of adjusting or expanding the original concepts set forth in this RFP, under the direction of the Department's Project Director, to accommodate unforeseen developments that take place during the term of the contract.

The contractor will be required to analyze and review the current environment, including researching and summarizing the current national trend practices for contracting Medicaid program administration, management, and applied information technology, interview Department and other appropriate staff, study existing and future technologies and produce alternative solutions or approach recommendations.

During the course of the contract, the contractor will provide the deliverables for each task to the Department's Project Director at the completion of the task.

A task will not be considered complete until all associated deliverables have been accepted and approved by the Department in writing.

On a periodic basis the contractor will be responsible for overall project status reports and status meetings for items included in an approved work plan. Payment to the contractor will be based on the payment methodology set forth in Section 4.1.5 of this RFP.

The contractor will be responsible for:

## 2.1 Quality Assurance Phase (Phase I)

The business consultant will be responsible for providing an ongoing critical review and assessment of the performance of the current fiscal agent from the inception of the business consultant contract through the end of the current fiscal agent contract.

### Consultation and Project Management

The contractor must maintain a full time, on-site presence in the Albany area in continuation of support for the Department through the term of the new fiscal agent contract. The contractor shall provide on-going technical advice, assistance in resolving operational issues, assistance in establishing procedures for monitoring fiscal agent deliverables, assistance in reviewing fiscal agent operational deliverables, and continue to provide support in project management decision making and planning efforts.

Deliverable: Technical and Management Assistance during Operations.

#### 2.1.1 Develop a QA Plan

Deliverable: QA Plan due to the Department within thirty business days of the approval of the contract.

#### 2.1.2 Quality Assurance Plan

The contractor's QA Plan shall provide a detailed project work plan to include, but not be limited to, separate tasks for each QA activity and checkpoint; logical sequence and interdependencies including Department and fiscal agent tasks; resource requirements for all parties; target completion dates for each task; identification of and compliance with deadlines and milestones; methodology for issue/problem tracking and resolution; identification of risks and strategies for managing.

QA procedures shall be developed by the contractor and approved by the Department as the means to monitor, evaluate, and report on project status, progress, problems and exceptions.

##### 2.1.2.1 Monitor Risk Management, Problems and Resolutions

The contractor's QA Plan shall include methods to identify, address and resolve various issues and problems that may arise during Phase I of the project and which could affect the quality of the product or timely completion of the project. To avert crisis decision making, the QA Plan must provide a detailed approach for:

2.1.2.1.1 Conflict resolution for various scenarios that might arise in the Operations phase.

- 2.1.2.1.2 Reviewing and monitoring all project status reports, and investigating and reporting on items that could result in increased risk to the project.
- 2.1.2.1.3 Evaluating the impact and probable causes of missed deadlines, identifying corrective actions, developing plans to minimize the impact of missed deadlines, and monitoring the progress of corrective actions.
- 2.1.2.1.4 Identifying potential risk indicators; i.e., project activities or events that are likely to cause significant levels of risk to the functioning of the system and all its components.
- 2.1.2.1.5 Providing detailed descriptions of proactive steps that the Department can implement to prevent and/or reduce risks.
- 2.1.2.1.6 Identifying risk trigger points based on risk indicators that have been identified.
- 2.1.2.1.7 In the event a risk trigger point is encountered, the contractor shall identify and recommend in writing appropriate intervention strategies.
- 2.1.2.1.8 Updating status reports.

#### 2.1.2.2 Develop Review and Evaluation Criteria for Fiscal Agent Deliverables

The contractor shall be responsible for developing a complete system of review and compliance procedures which will be implemented by the QA contractor in reviewing the fiscal agent's deliverables.

##### 2.1.2.2.1 Develop Review Procedures

Review procedures must include procedural guidelines, checklists, schedules and turnarounds, standardized reporting forms, identification of deliverables, and any other materials deemed critical or useful for the review process.

Deliverable: Forms and Written Procedures for Review Process.

##### 2.1.2.2.2 Develop Evaluation Procedure

The contractor shall work with the Department to define appropriate evaluation criteria for each deliverable. Expectations and requirements shall be defined in advance for the fiscal agent in order to facilitate the appropriate delivery, timely review and ultimate acceptance of each deliverable. Evaluation criteria shall include required content, format, documentation, and recourse to be utilized in the event of problem identification.

Deliverable: Evaluation criteria specific to each deliverable.

### 2.1.3 Review Fiscal Agent's Deliverables

The contractor shall review in detail all deliverables from the fiscal agent and work with the Project Management Team to assess the quality and acceptability of deliverables. The Review Procedures shall be implemented and reports shall be provided to the Department and to the fiscal agent regarding the recommended acceptance or rejection of deliverables.

Deliverable: Review of fiscal agent deliverables.

### 2.1.4 Ongoing Consultation and Project Management

The contractor must maintain a full time, on-site presence in the Albany area in the role of on-going assistance and support to the Department. The contractor shall be an integral, daily and vital member of the total project and is expected to provide ongoing technical advice and to assist in project management decision making and planning efforts.

Deliverable: Technical and management assistance during the term of the current fiscal agent contract.

### 2.1.5 Administrative: Attend Project Meetings

As a critical and full time member of the Project Management Team, the contractor is required to be present at all project management meetings, project status meetings, steering committee meetings (if so advised), and to be accessible, and available for, frequent ad hoc meetings that will arise during Phase I of the project.

#### 2.1.5.1 Project Management Meetings

The contractor shall attend weekly project management meetings with team management at a location to be determined by the Department. These weekly meetings shall follow a pre-set agenda developed by the fiscal agent with input from the Department but shall also allow the team to discuss other issues of concern. The contractor shall prepare minutes of each meeting to document the highlights and issues discussed, follow-up tasks, and responsible individuals.

The agenda should include:

2.1.5.1.1 Review and discussion of operational reports

2.1.5.1.2 Review and discussion of operational issues

2.1.5.1.3 Discussion of other issues

2.1.5.1.4 Projection of unusual workload items for the upcoming period

Deliverable: Participation in Project Management Meetings and production of meeting minutes (due within two business days of each meeting).

#### 2.1.5.2 Status Reporting Meetings

The contractor shall attend biweekly (every other week) Project Status Reporting meetings with Executive and Project Management, monthly Steering Committee meetings, and other scheduled and ad hoc meetings as determined by the Department and by the QA Work Plan. The contractor shall prepare minutes to track highlights and issues discussed.

Deliverable: Participation in meetings and production of meeting minutes (due within two business days of the meeting).

#### 2.1.6 Prepare Biweekly QA and Project Status Reports

Project QA Status Reports shall be required biweekly and will cover the status of QA tasks and the review and monitoring of fiscal agent's tasks and Department tasks.

##### 2.1.6.1 Status reports on QA tasks shall include, but are not limited to:

- 2.1.6.1.1 Project status and stage of completion
- 2.1.6.1.2 Accomplishments during the reporting period
- 2.1.6.1.3 Problems that were identified, and corresponding resolutions
- 2.1.6.1.4 Immediate goals for the next reporting period
- 2.1.6.1.5 Issues that need to be addressed
- 2.1.6.1.6 Identification for schedule slippages and recommendations for resolution
- 2.1.6.1.7 Current contractor staff assignments, schedules, locations

##### 2.1.6.2 Status reports on Department and fiscal agent tasks shall include, but are not limited to, reviews of the following:

- 2.1.6.2.1 Operational issues that need to be addressed
- 2.1.6.2.2 Identification of any schedule slippage and strategy for resolution
- 2.1.6.2.3 Corrective action status
- 2.1.6.2.4 Risk indicators that are likely to cause significant levels of risk to the functioning of the project (late deliverables, cost overruns, unanticipated events, etc.)
- 2.1.6.2.5 Deviations from the APD and RFP requirements.

Deliverable: Biweekly QA Status Reports and Project Status Reports due within two business days of the

close of the biweekly period.

## 2.1.7 Prepare Quarterly Project Status Report

Written Quarterly Project Status Reports shall be delivered to the Project Manager on the tenth business day of the month following the end of each contract year quarter. This document will be the primary tool for reporting to Federal and other State officials on funding and program matters. All contractor costs for the quarter are to be reported in a format to be specified and approved by the Department.

Deliverable: Quarterly Project Status Report due on or before the tenth business day of the month following the end of each contract year quarter.

## 2.2 RFP Preparation Phase (Phase II)

2.2.1 Presenting options and recommendations to the Department regarding procurement strategies and approaches, including recommendations on whether the Department should adopt a replacement or redesign strategy as well as accommodating the decision of the Department related to handling of the data warehouse or any subsystem or component in the procurement.

2.2.2 Presenting options and recommendations to the Department regarding which pricing model to employ for the evaluation and selection components of the RFP process and for the contract (e.g., fixed price, transaction volume based, cost plus, etc.).

2.2.3 Presenting options and recommendations to the Department regarding which evaluation approach to use for the technical and cost components of the RFP process that will encourage a competitive procurement.

2.2.4 Preparing an RFP to select a fiscal agent who would be responsible for the implementation of a new system or the takeover of the existing eMedNY, with the potential transition to a new system (e.g., enhancements, commercial off-the-shelf software, etc.), including how the procurement of the data warehouse will be handled, currently being operated by Computer Sciences Corporation. This also includes interviewing Department and other appropriate staff to assure that the RFP reflects the current operational state of the system and to solicit suggestions for improving the system. This includes:

2.2.4.1 Reviewing Department standard language for the RFP and confirm understanding of standard language.

2.2.4.2 Developing eMedNY system requirements:

2.2.4.2.1 Addressing system architecture issues

2.2.4.2.2 Identifying critical issues for the RFP.

2.2.4.2.3 Conducting on-site meetings as necessary.

- 2.2.4.2.4 Submitting draft of eMedNY system requirements for review.
- 2.2.4.2.5 Meeting with the Department to discuss the submitted draft and incorporate required changes.
- 2.2.4.3 Developing the Scope of Work section of the RFP:
  - 2.2.4.3.1 Defining State and contractor responsibilities for the Design Phase.
  - 2.2.4.3.2 Defining State and contractor responsibilities for the Development Phase.
  - 2.2.4.3.3 Defining State and contractor responsibilities for the System Implementation Phase.
  - 2.2.4.3.4 Defining State and contractor responsibilities for the Operations Phase.
  - 2.2.4.3.5 Developing system performance requirements to be used as contract management tools.
  - 2.2.4.3.6 Submitting draft of eMedNY scope of work for review.
  - 2.2.4.3.7 Meeting with the Department to discuss the submitted draft and incorporate required changes.
- 2.2.4.4 Developing the contract terms and conditions section of the RFP:
  - 2.2.4.4.1 Reviewing and make recommendations for the specifications for performance standards, including damages, notices, and payment withholds.
  - 2.2.4.4.2 Recommending payment provisions for fiscal agent support and development efforts.
  - 2.2.4.4.3 Submitting draft of Terms and Conditions for review by the Department, legal staff, and other required State agencies.
  - 2.2.4.4.4 Meeting with State reviewers to discuss the submitted draft and incorporate required changes.
- 2.2.4.5 Defining proposal submission requirements:
  - 2.2.4.5.1 Defining the procurement process and rules based on New York guidelines, CMS requirements, and consultant expertise. Establish a detailed schedule for the procurement.
  - 2.2.4.5.2 Reviewing recent eMedNY procurement efforts and recommend appropriate technical proposal contents.
  - 2.2.4.5.3 Defining minimum contractor and Department staffing requirements for each phase of the fiscal agent contract.
  - 2.2.4.5.4 Submitting staffing requirements to the Department for approval.
  - 2.2.4.5.5 Drafting other technical proposal submission requirements.
  - 2.2.4.5.6 Developing cost proposal requirements.

- 2.2.4.5.7 Analyzing potential proposal outcomes.
- 2.2.4.5.8 Submitting recommendations for cost proposal contents.
- 2.2.4.6 Defining the evaluation approach, including:
  - 2.2.4.6.1 Possible evaluation alternatives with the Department staff.
  - 2.2.4.6.2 Key evaluation and selection issues that will encourage a competitive procurement, such as the desired balance between technical and cost proposals.
  - 2.2.4.6.3 The potential full disclosure of criteria within the RFP.
  - 2.2.4.6.4 Technical evaluation factors.
  - 2.2.4.6.5 Draft an appendix with technical criteria of desired approach.
  - 2.2.4.6.6 Finalize approach to cost evaluation.
  - 2.2.4.6.7 Prepare and submit draft proposal evaluation approach for review.
- 2.2.4.7 Reviewing related RFP material and suggested changes prepared by the Department, including background sections and appendices and identify additional items or submission forms as needed.
- 2.2.4.8 Submitting final draft of the entire RFP to the Department for approval.
- 2.2.5 Participating and documenting the discussions and decisions resulting from any design sessions that may be required.
- 2.2.6 Preparing the APD and up to five APD-Us.
- 2.2.7 Preparing a Proposal Evaluation Plan. This is required to be completed before the release of the RFP.
  - 2.2.7.1 Developing detailed evaluation criteria for the RFP. These elements include:
    - 2.2.7.1.1 Mandatory proposal submission requirements.
    - 2.2.7.1.2 Evaluation categories for both the technical and financial proposals.
    - 2.2.7.1.3 A scoring approach.
    - 2.2.7.1.4 Technical and financial business evaluation factors.
  - 2.2.7.2 Developing the detailed list of evaluation questions. For each of the technical evaluation categories, drafting a series of detailed evaluation questions. The draft list of questions will be submitted to the Department for comment. Once the list of evaluation questions is finalized, the number of available scoring weights can be determined. The contractor will work



closely with the Department to determine an approach to appropriately distribute the weights among the questions.

2.2.7.3 Preparing the draft proposal evaluation plan for submission to the Department for comment.

2.2.7.4 Finalizing the evaluation plan based upon comments from the Department. The document format should facilitate extracting information that the Department can use as material for training evaluators.

2.2.7.5 Developing evaluation instructions and conducting a one-day training session for the individuals assigned to conduct the evaluation of the proposals submitted in response to the RFP.

2.2.8 Providing procurement support including:

2.2.8.1 Preparation for and conduct of the offerors' conference.

2.2.8.2 Preparation of responses to offerors' questions.

2.2.8.3 Preparation of RFP amendments.

2.2.9 Providing evaluation and selection assistance to the Department, including:

2.2.9.1 Support in overall coordination of the procurement process.

2.2.9.2 Preparation for and conduct of the oral presentations.

2.2.9.3 Preparation of reference check scripts.

2.2.9.4 Facilitation of evaluator discussions.

2.2.9.5 Preparation of the contractor selection report.

2.2.10 Providing award and negotiation support to the Department, including:

2.2.10.1 Risk assessment of the apparent successful offeror.

2.2.10.2 Technical assistance in negotiations.

## 2.3 Takeover QA Phase (Phase III)

(Note: This Phase may not be undertaken if the incumbent fiscal agent – Computer Sciences Corporation – is awarded the contract for the fiscal agent.)

### 2.3.1 Develop a QA Plan

Deliverable: QA Plan due to the Department within thirty business days of the Department's approval of the fiscal agent's work plan.

### 2.3.1.1 QA Plan

The contractor's QA Plan shall provide a detailed project work plan to include, but not be limited to, separate tasks for each QA activity and checkpoint; logical sequence and interdependencies including the Department and the fiscal agents' tasks; resource requirements for all parties; target completion dates for each task; identification of and compliance with deadlines and milestones; methodology for issue/problem tracking and resolution; identification of risks and strategies for managing.

The QA Plan will be used to evaluate and control the quality of all the fiscal agents' project deliverables. Throughout Phase III of the project, this plan may, if necessary, be updated by the QA contractor and any changes shall be submitted to the Department for approval before any changes are implemented.

A final QA Plan shall address in detail the following areas:

#### 2.3.1.1.1 Develop and Implement QA Controls Procedures

The contractor is responsible for monitoring compliance with the fiscal agents' approved project work plan. To this end, QA procedures shall be developed by the contractor and approved by the Department as the means to monitor, evaluate, and report on project status, progress, problems and exceptions.

#### 2.3.1.1.2 Monitor Project Schedule

The contractor shall set up and manage the automated project management system and shall monitor and assist in the implementation of project scheduling and status reporting functions. An integrated scheduling system must allow communication of each team's work plans and schedules, and it must include the capacity for frequent updates.

The contractor shall use Microsoft Project for managing, updating, monitoring and reporting on the status of work plans of all major parties.

#### 2.3.1.1.3 Monitor Project Scope

Project scope will be defined by the approved work plan of the fiscal agent. The contractor shall be responsible for evaluating and reporting on the adherence of all Department and fiscal agents design plans and deliverables to the scope of the project, by

project phase. The QA plan shall provide a means to review and monitor all project activities throughout all phases of the project. The fiscal agents' approved work plan will be used as the benchmark for design issues and for deliverables. Any changes to the scope of the project shall be identified and submitted for approval by the Project Manager, with recommendations as to their relative priority.

#### 2.3.1.1.4 Monitor Project Quality Control

The contractor shall provide ongoing, interactive, on-site technical and management project support to the Project Management Team. The contractor shall work with Department personnel to develop QA controls that will assure that the Department receives quality deliverables from the fiscal agents while achieving all critical project goals and deadlines.

The QA plan shall present detailed approaches for:

- 2.3.1.1.4.1 Updating the QA work plan from phase to phase, if needed.
- 2.3.1.1.4.2 Monitoring and evaluating the fiscal agents' activities and deliverables phase by phase, adherence to schedules, attainment of milestones, and quality of design, development, and technical work.
- 2.3.1.1.4.3 Managing QA reviews, and recommendations for interdependencies between Department, fiscal agents and contractor.
- 2.3.1.1.4.4 Managing the completion of each phase and the acceptance or rejection of deliverables.
- 2.3.1.1.4.5 Tracking project changes requests, decision requests, and informational items.
- 2.3.1.1.4.6 Identifying quality checkpoints through all phases of the project to ensure that the Department is advised of deliverables that do not meet or exceed all requirements and specifications.
- 2.3.1.1.4.7 Developing assessment procedures to evaluate that project objectives are met and that the expected benefits are derived.
- 2.3.1.1.4.8 Designing sign-off procedures for decision making points throughout Phase III of the project, including reviews and approvals of fiscal agents' work plans, schedules

and deliverables.

- 2.3.1.1.4.9 Establishing monitoring mechanisms for critical deadlines for the Department and fiscal agents.
- 2.3.1.1.4.10 Reviewing and monitoring the fiscal agents' adherence to programming standards.
- 2.3.1.1.4.11 Identifying and recognizing successful completion of project phases, deadlines, milestones, quality of workmanship.
- 2.3.1.1.4.12 Recommending improvements in quality, efficiency, lines of communication, and project partnership during all phases and for all parties to the project.
- 2.3.1.1.4.13 Monitoring change management issues with respect to technical changes such as versions of software, error detection and corrections, movement of modules into production.
- 2.3.1.1.4.14 Monitoring adherence to system development methodology.

#### 2.3.1.1.5 Monitor Risk Management, Problems and Resolutions

The contractor's QA Plan shall include methods to identify, address and resolve various issues and problems that may arise during Phase III of the project and which could affect the quality of the product or timely completion of the project. To avert crisis decision making, the QA plan must provide a detailed approach for:

- 2.3.1.1.5.1 Conflict resolution for various scenarios that might arise in the implementation and post-implementation support phases.
- 2.3.1.1.5.2 Reviewing and monitoring all project status reports, and investigating and reporting on items that could result in increased risk to the project.
- 2.3.1.1.5.3 Evaluating the impact and probable causes of missed deadlines, identifying corrective action and develop plans to minimize the impact of missed deadlines, and monitoring the progress of corrective actions.
- 2.3.1.1.5.4 Identifying potential risk indicators; i.e., project activities or events that are likely to cause significant levels of risk to the functioning and timely completion of the project.
- 2.3.1.1.5.5 Providing detailed descriptions of

proactive steps that the Department can implement to prevent and/or reduce risks.

2.3.1.1.5.6 Identifying risk trigger points based on risk indicators that have been identified.

2.3.1.1.5.7 In the event a risk trigger point is encountered, the contractor shall identify and recommend in writing appropriate intervention strategies.

#### 2.3.1.1.6 Monitor Technical Compliance

The contractor shall assist the Department in developing a methodology to evaluate the technical aspects of the project. Technical compliance reviews will be required in the areas of: systems designs, structure and organization; quality, workmanship and efficiency of code; adequate storage capacities and response times; and all other technically relevant system functionality.

#### 2.3.1.1.7 Review Fiscal Agents' Work Plans, Designs and Reports

The contractor shall be responsible for developing a complete system of review and compliance procedures which will be implemented by the QA contractor in reviewing the fiscal agents' deliverables including work plans, systems designs and deliverables for compliance, efficiency, functionality and all project requirements.

##### 2.3.1.1.7.1 Develop Review Procedures

Review procedures must include procedural guidelines, checklists, schedules and turnarounds, standardized reporting forms, and any other materials deemed critical or useful for the review process.

Deliverable: Forms and Written Procedures for Review Process.

##### 2.3.1.1.7.2 Develop Evaluation Procedure

###### 2.3.1.1.7.2.1 Define Requirements for Deliverables

The contractor shall develop and make available to the fiscal agents the required

form and presentation for deliverables to the Department. The intent shall be to clarify the expectations of the Department in areas such as consistent manner of delivery including authorized receivers, required signatures, and verified dates, and required allotted response time on the part of the Department.

Deliverable: Deliverables Requirements Document

#### 2.3.1.1.7.2.2 Define evaluation criteria for each specific deliverable.

The contractor shall work with the Department to define appropriate evaluation criteria for each deliverable specified in the fiscal agents' work plan. Deliverables will be considered for overall quality, completeness, timeliness and adherence to project plan and scope. Expectations and requirements shall be defined in advance for the fiscal agents in order to facilitate the appropriate delivery, timely review and ultimate acceptance of each deliverable. Evaluation criteria shall include required content, format, documentation, the method of system acceptance testing that will be applied, and recourse to be utilized in the event of problem identification.

Deliverable: Evaluation criteria specific to each deliverable.

### 2.3.2 Review Fiscal Agents' Deliverables

The contractor shall review in detail all deliverables from the fiscal agents and work with the Project Management Team to assess the quality and acceptability of deliverables. The review procedures shall be implemented and reports shall be provided to the Department and to the fiscal agent regarding the recommended acceptance or rejection of deliverables.

Deliverable: Review of fiscal agents' deliverables. The contractor shall complete the initial review of the fiscal agents' deliverables within five business days of receipt from the fiscal agents.

### 2.3.3 Ongoing Takeover Phase Consultation and Project Management

The contractor must maintain a full time, on-site presence in the Albany area in the role of on-going assistance and support to the Department. The contractor shall be an integral, daily and vital member of the total project and is expected to provide ongoing technical advice and to assist in project management decision making and planning efforts.

Deliverable: Technical and management assistance during takeover.

### 2.3.4 Administrative: Attend Project Meetings

As a critical and full time member of the Project Management Team, the contractor is required to be present at all project management meetings, project status meetings, steering committee meetings (if so advised), and to be accessible, and available for, frequent ad hoc meetings that will arise during Phase III of the project.

#### 2.3.4.1 Project Management Meetings

The contractor shall attend weekly project management meetings with team management at a location to be determined by the Department. These weekly meetings shall follow a pre-set agenda developed by the fiscal agents with input from the Department but shall also allow the team to discuss other issues of concern. The contractor shall prepare minutes of each meeting to document the highlights and issues discussed, follow-up tasks, and responsible individuals.

The agenda should include:

2.3.4.1.1 Review and discussion of status reports

2.3.4.1.2 Review and discussion of actual progress versus scheduled activities

2.3.4.1.3 Discussion of major issues impacting the progress of the project

2.3.4.1.4 Discussion of other issues

#### 2.3.4.1.5 Projection of workload for the upcoming period

Deliverable: Production of meeting agendas, participation in Project Management Meetings and production of meeting minutes (due within two business days of each meeting).

#### 2.3.4.2 Status Reporting Meetings

The contractor shall attend biweekly (every other week) Project Status Reporting meetings with Executive and Project Management, monthly Steering Committee meetings, and other scheduled and ad hoc meetings as determined by the Department and by the QA Work Plan. The contractor shall prepare minutes to track highlights and issues discussed.

Deliverable: Production of meeting agendas, participation in meetings and production of meeting minutes (due within two business days of the meeting).

#### 2.3.5 Prepare Biweekly Quality Assurance and Project Status Reports

Project QA Status Reports shall be required biweekly and will cover the status of QA tasks and the review and monitoring of fiscal agents' tasks and Department tasks.

##### 2.3.5.1 Status reports on QA tasks shall include, but are not limited to:

- 2.3.5.1.1 Project status and stage of completion
- 2.3.5.1.2 Accomplishments during the reporting period
- 2.3.5.1.3 Problems that were identified and corresponding resolutions
- 2.3.5.1.4 Immediate goals for the next reporting period
- 2.3.5.1.5 Issues that need to be addressed
- 2.3.5.1.6 Updated Microsoft Project time line including all appropriate notations demonstrating percentage of tasks completed, assigned, remaining
- 2.3.5.1.7 Identification for schedule slippages and recommendations for resolution
- 2.3.5.1.8 Current contractor staff assignments, schedules, locations
- 2.3.5.1.9 Deviations from RFP requirements, including financial

##### 2.3.5.2 Status reports on the Department and the fiscal agents tasks shall include, but are not limited to, reviews of the following:

- 2.3.5.2.1 Takeover/transition issues that need to be addressed
- 2.3.5.2.2 Fiscal agents' updated project time line showing percentage of tasks completed, those assigned, and the remaining tasks
- 2.3.5.2.3 Identification of any schedule slippage and strategy for resolution



2.3.5.2.4 Corrective action status

2.3.5.2.5 Risk indicators that are likely to cause significant levels of risk to the functioning and/or timely completion of the project (late deliverables, cost overruns, unanticipated events, etc.)

2.3.5.2.6 Deviations from the APD and RFP requirements.

Deliverable: Biweekly QA Status Reports and Project Status Reports due within two business days of the close of the bi-weekly period.

#### 2.3.6 Prepare Quarterly Project Status Report

Written Quarterly Project Status Reports shall be delivered to the Project Manager on the tenth business day of the month following the end of each contract year quarter. This document will be the primary tool for reporting to federal and other State officials on funding and program matters. All contractor costs for the quarter are to be reported in a format to be specified and approved by the Department.

Deliverable: Quarterly Project Status Report due on or before the tenth business day of the month following the end of each contract year quarter.

#### 2.3.7 Prepare APD Updates

The contractor shall provide assistance to the Department by preparing APD updates.

Deliverable: APD Updates.

### 2.4 Operations and Transition Quality Assurance Phase (Phase IV)

#### Consultation and Project Management

The contractor must maintain a full time, on-site presence in the Albany area in continuation of support for the Department through the term of the new fiscal agent contract. The contractor shall provide on-going technical advice, assistance in resolving operational issues, assistance in establishing procedures for monitoring fiscal agent deliverables, assistance in reviewing fiscal agent operational deliverables, and continue to provide support in project management decision making and planning efforts.

Deliverable: Technical and Management Assistance during Operations.

#### 2.4.1 Develop a QA Plan

Deliverable: QA Plan due to the Department within thirty business days of the Department's approval of the fiscal agent's work plans.

#### 2.4.2 Quality Assurance Plan

The contractor's QA Plan shall provide a detailed project work plan to include, but not be limited to, separate tasks for each QA activity and checkpoint; logical sequence and interdependencies including Department and fiscal agent tasks; resource requirements for all parties; target completion dates for each task; identification of and compliance with deadlines and milestones; methodology for issue/problem tracking and resolution; identification of risks and strategies for managing.

QA procedures shall be developed by the contractor and approved by the Department as the means to monitor, evaluate, and report on project status, progress, problems and exceptions.

#### 2.4.2.1 Monitor Risk Management, Problems and Resolutions

The contractor's QA Plan shall include methods to identify, address and resolve various issues and problems that may arise during Phase IV of the project and which could affect the quality of the product or timely completion of the project. To avert crisis decision making, the QA plan must provide a detailed approach for:

- 2.4.2.1.1 Conflict resolution for various scenarios that might arise in the Operations phase.
- 2.4.2.1.2 Reviewing and monitoring all project status reports, and investigating and reporting on items that could result in increased risk to the project.
- 2.4.2.1.3 Evaluating the impact and probable causes of missed deadlines, identifying corrective action, developing plans to minimize the impact of missed deadlines, and monitoring the progress of corrective actions.
- 2.4.2.1.4 Identifying potential risk indicators, i.e., project activities or events that are likely to cause significant levels of risk to the functioning of the system and all its components.
- 2.4.2.1.5 Providing detailed descriptions of proactive steps that the Department can implement to prevent and/or reduce risks.
- 2.4.2.1.6 Identifying risk trigger points based on risk indicators that have been identified.
- 2.4.2.1.7 In the event a risk trigger point is encountered, the contractor shall identify and recommend in writing appropriate intervention strategies.

#### 2.4.2.2 Develop Review and Evaluation Criteria for Fiscal Agent Deliverables

The contractor shall be responsible for developing a complete system of review and compliance procedures which will be implemented by the QA contractor in reviewing the fiscal agent's deliverables.

#### 2.4.2.2.1 Develop Review Procedures

Review procedures must include procedural guidelines, checklists, schedules and turnarounds, standardized reporting forms, identification of deliverables, and any other materials deemed critical or useful for the review process.

Deliverable: Forms and Written Procedures for Review Process.

#### 2.4.2.2.2 Develop Evaluation Procedure

The contractor shall work with the Department to define appropriate evaluation criteria for each deliverable. Expectations and requirements shall be defined in advance for the fiscal agent in order to facilitate the appropriate delivery, timely review and ultimate acceptance of each deliverable. Evaluation criteria shall include required content, format, documentation, and recourse to be utilized in the event of problem identification.

Deliverable: Evaluation criteria specific to each deliverable.

#### 2.4.3 Review Fiscal Agent's Deliverables

The contractor shall review in detail all deliverables from the fiscal agent and work with the Project Management Team to assess the quality and acceptability of deliverables. The Review Procedures shall be implemented and reports shall be provided to the Department and to the fiscal agent regarding the recommended acceptance or rejection of deliverables.

Deliverable: Review of fiscal agent deliverables.

#### 2.4.4 Ongoing Implementation Phase Consultation and Project Management

The contractor must maintain a full time, on-site presence in the Albany area in the role of on-going assistance and support to the Department. The contractor shall be an integral, daily and vital member of the total project and is expected to provide ongoing technical advice and to assist in project management decision making and planning efforts.

Deliverable: Technical and management assistance during the first six months of operations.

#### 2.4.5 Administrative: Attend Project Meetings

As a critical and full time member of the Project Management Team, the

contractor is required to be present at all project management meetings, project status meetings, steering committee meetings (if so advised), and to be accessible, and available for, frequent ad hoc meetings that will arise during Phase IV of the project.

#### 2.4.5.1 Project Management Meetings

The contractor shall attend weekly project management meetings with team management at a location to be determined by the Department. These weekly meetings shall follow a pre-set agenda developed by the fiscal agent with input from the Department but shall also allow the team to discuss other issues of concern. The contractor shall prepare minutes of each meeting to document the highlights and issues discussed, follow-up tasks, and responsible individuals.

The agenda should include:

2.4.5.1.1 Review and discussion of operational reports

2.4.5.1.2 Review and discussion of operational issues

2.4.5.1.3 Discussion of other issues

2.4.5.1.4 Projection of unusual workload items for the upcoming period

Deliverable: Participation in Project Management Meetings and production of meeting minutes (due within two business days of each meeting).

#### 2.4.5.2 Status Reporting Meetings

The contractor shall attend biweekly (every other week) Project Status Reporting meetings with Executive and Project Management, monthly Steering Committee meetings, and other scheduled and ad hoc meetings as determined by the Department and by the QA Work Plan. The contractor shall prepare minutes to track highlights and issues discussed.

Deliverable: Participation in meetings and production of meeting minutes (due within two business days of the meeting).

#### 2.4.6 Prepare Biweekly Quality Assurance and Project Status Reports

Project QA Status Reports shall be required biweekly and will cover the status of QA tasks and the review and monitoring of fiscal agent's tasks and Department tasks.

##### 2.4.6.1 Status reports on QA tasks shall include, but are not limited to:

2.4.6.1.1 Project status and stage of completion

2.4.6.1.2 Accomplishments during the reporting period

2.4.6.1.3 Problems that were identified, and corresponding resolutions

- 2.4.6.1.4 Immediate goals for the next reporting period
- 2.4.6.1.5 Issues that need to be addressed
- 2.4.6.1.6 Identification for schedule slippages and recommendations for resolution
- 2.4.6.1.7 Current contractor staff assignments, schedules, locations

2.4.6.2 Status reports on Department and fiscal agent tasks shall include, but are not limited to, reviews of the following:

- 2.4.6.2.1 Implementation/development issues that need to be addressed
- 2.4.6.2.2 Identification of any schedule slippage and strategy for resolution
- 2.4.6.2.3 Corrective action status
- 2.4.6.2.4 Risk indicators that are likely to cause significant levels of risk to the functioning of the project (late deliverables, cost overruns, unanticipated events, etc.)
- 2.4.6.2.5 Deviations from the APD and RFP requirements.

Deliverable: Biweekly QA Status Reports and Project Status Reports due within two business days of the close of the bi-weekly period.

#### 2.4.7 Prepare Quarterly Project Status Report

Written Quarterly Project Status Reports shall be delivered to the Project Manager on the tenth business day of the month following the end of each contract year quarter. This document will be the primary tool for reporting to Federal and other State officials on funding and program matters. All contractor costs for the quarter are to be reported in a format to be specified and approved by the Department.

Deliverable: Quarterly Project Status Report due on or before the tenth business day of the month following the end of each contract year quarter.

#### 2.4.8 Prepare APD Updates

The contractor shall provide assistance to the Department by preparing APD updates in response to federal requirements.

Deliverable: APD Updates.

### 3. Proposal Requirements

#### 3.1 Format for Required Information

Proposals must be prepared in the format described in Sections 3.2 and 3.3 below. Failure to comply with the specified format will result in the offeror's proposal incurring penalty points for each instance of noncompliance with the

formatting requirements, thereby reducing its final score. The format of the proposal must follow, in sequence, each of the sections outlined. While the RFP numbering scheme does not need to be followed, the proposal must clearly reference the specific RFP sections by number that are being addressed. Appendices should be similarly sequential.

Responses should be organized in a manner that will facilitate evaluation. The offeror's explanation of approach to the tasks in Section 2 will also be used as a basis for evaluating the offeror's proposal.

If an offeror supplies a publication to respond to a requirement, the response should include references to the publication and page numbers. Proposals without these references will be considered to have no reference materials included.

Proposals must be signed by an official authorized to bind the offeror to its provisions.

Proposals which do not address all requirements of this RFP will be considered non-responsive and may be disqualified from consideration for award of the contract.

## 3.2 Technical Proposal

### 3.2.1 Statement of Understanding

3.2.1.1 State in concise terms the offeror's understanding of the requirements of this RFP and how the offeror can assist the Department in accomplishing each of the four phases of this effort.

3.2.1.2 Include a statement indicating the offeror's willingness to enter into a contractual agreement containing, at a minimum, the terms and conditions contained in Section 4, herein.

3.2.1.3 Include a statement of assurance that the offer will remain valid for a minimum of 180 calendar days from the "Closing Date for Submission of Proposals" specified in Section 5.

3.2.1.4 Failure to include the statements required by Sections 3.2.1.1 through 3.2.1.3 above will render the proposal nonresponsive to this RFP and may be basis for the Department to reject the proposal.

### 3.2.2 Organizational Summary

If, in the event the candidates proposed and accepted for this engagement are not available when the contract commences, the Department requires proposed staff of equal or greater qualifications as a replacement, and the Department reserves the right of prior approval of the proposed candidates.

### 3.2.2.1 Corporate Summary

- 3.2.2.1.1 Provide a brief description, including name and address, of the offering organization (Use Form A).
- 3.2.2.1.2 List the name, title and responsibilities of all officers, identifying those who are authorized to negotiate a contract with the Department and who will have ultimate responsibility and accountability for this contract (Use Form B).
- 3.2.2.1.3 Describe the role of board members in governance and policy making.
- 3.2.2.1.4 Give the full name and address of any organization with which the offeror may subcontract for any services under the project and mechanisms for assuring effective and efficient operations. List responsible officers of each subcontractor, including those individuals authorized to negotiate for subcontractors. List any financial interest the offeror has in proposed subcontractors. Evidence of a potential subcontractor's willingness to participate or enter into subcontractual arrangements should be included (Use Form C).
- 3.2.2.1.5 Provide information detailing the expertise and experience of the corporation in the areas set forth in Section 1.2 herein, using the format set forth below:

For each of the areas listed in Section 1.2, provide the following:

- 3.2.2.1.5.1 The corporation's expertise and experience relative to the cited area, i.e., the number and type of staff available for such engagements; the ability of the corporation to call on external resources; the number of years the corporation has been involved in this line of business, etc.
- 3.2.2.1.5.2 The last three engagements specifically related to the cited area. The information must include:
  - 3.2.2.1.5.2.1 Client/employer's name and address and the identity and telephone number of the client manager directly responsible for the engagement.
  - 3.2.2.1.5.2.2 A full description of the engagement including duration, number of staff

assigned and the products delivered as a result of the engagement.

3.2.2.1.5.2.3 Duration (from/to dates).

### 3.2.2.2 Project Leader Summary

Provide information detailing the expertise and experience of the project leader and alternate project leader for the entire engagement, following the format set forth below:

3.2.2.2.1 For the project leader and alternate, list the current assignment of the candidate, i.e., the project and client for whom the candidate is currently engaged, and the expected duration of this assignment.

3.2.2.2.2 For the project leader, list educational background and specific work experience relating to engagements of this type. The only engagements/assignments that should be listed are those that relate to the areas set forth in Section 1.2. The citations of work experience must include at a minimum the following:

3.2.2.2.2.1 A full description of the engagement/assignment.

3.2.2.2.2.2 Duration (from/to dates).

3.2.2.2.2.3 The role served by the individual (e.g., Project Director, lead analyst, etc.) in this engagement/assignment and her/his responsibilities.

3.2.2.2.2.4 Client/employer's name and address, and the identity and telephone number of the client contact or immediate manager responsible for the engagement/assignment. (For use as a reference check, please do not use internal corporation references.)

### 3.2.2.3 Staff Summary

Provide information detailing the expertise and experience of the staff proposed for this engagement, following the format set forth below:

3.2.2.3.1 For each candidate, list the current assignment of the candidate, i.e., the project and client for whom the candidate is currently engaged, and the expected duration of this assignment.

3.2.2.3.2 For each candidate, list educational background and specific work experience relating to engagements of this type. The only engagements/assignments that should be listed are those that relate to the areas set



forth in Section 1.2. Because of the scope of this engagement, the Department seeks the services of a firm who can provide corporate depth. Therefore, in addition to the proposed Project Leader and Alternate Project Leader, ten candidates must be proposed. If the offeror chooses to submit more than ten candidates, only the first ten will be evaluated. The citations of work experience must include, at a minimum, the following:

- 3.2.2.3.2.1 A full description of the engagement/assignment.
- 3.2.2.3.2.2 Duration (from/to dates).
- 3.2.2.3.2.3 The role served by the individual (e.g., Project Director, lead analyst, etc.) in this engagement/assignment and her/his responsibilities.
- 3.2.2.3.2.4 Client/employer's name and address and the identity and telephone number of the client contact or immediate manager responsible for the engagement/assignment. (For use as a reference check, please do not use internal corporation references.)

- 3.2.2.4 Describe any litigation in which the offeror is presently involved (Use Form D).

### 3.2.3 Proposed Approach

In the technical proposal, explain, in detail, the proposed strategy for addressing the tasks posed in this RFP for each of the four phases of this project and why this strategy will meet the requirements of this RFP. This section should follow the format of the proposed tasks, discussing the tasks in the same sequence, and covering the same subject areas. While the RFP numbering scheme does not need to be followed, the proposal must clearly reference the specific RFP sections by number that are being addressed.

### 3.2.4 Work Plan

The technical proposal must describe the plan for carrying out the work presented in the proposal for each of the four phases of this project.

This section must include the following:

- 3.2.4.1 A description of the tasks required to accomplish the work detailed in the proposal for each of the four phases of this project, including all the tasks indicated in Section 2 of this RFP;
- 3.2.4.2 A description of the deliverables that will be produced by tasks

specified in Section 2 of this RFP for each of the four phases of this project, and the expected dates of completion;

3.2.4.2.1 For Phase I, as discussed in Section 2.1, the offeror should provide a comprehensive plan detailing all the activities that would be expected in monitoring the operations for a project of the scale and complexity of the eMedNY and the data warehouse and organizational support as set forth in Section 3.2.2. This should include a detailed staffing plan.

3.2.4.2.2 For Phase II, describe the deliverables as stated in Section 2.2 and organizational support as set forth in Section 3.2.2.

3.2.4.2.3 For Phase III, as discussed in Section 2.3, the offeror should provide a comprehensive plan detailing all activities that would be anticipated by the offeror for a project of this scale and organizational support as set forth in Section 3.2.2.

3.2.4.2.4 For Phase IV, as discussed in Section 2.4, the offeror should provide a comprehensive plan detailing all the activities that would be expected in monitoring the operations for a project of the scale and complexity of the eMedNY and the data warehouse and organizational support as set forth in Section 3.2.2. This should include a detailed staffing plan.

3.2.4.3 A GANTT chart showing the start and completion dates of each task for each of the four phases of this project, and

3.2.4.4 A chart showing the individual and labor hours to be allocated to each task for each of the four phases of this project.

### 3.3 Financial Proposal

This portion of the proposal must be packaged separately from the remainder of the proposal and properly identified. It must include:

3.3.1 A Financial package (Section 7) must be completed by all prospective offerors. Section 7 consists of the cost form for Phases I-IV and the summary (Form E), the Vendor Responsibility Form (Form F), the Executive Order 127 Form (Form G), and the Department of Taxation and Finance Contractor Certification Form (Form H). A total price for the entire Phase I should be based upon tasks outlined in Section 2.1. The price for Phase II should correspond to the stated deliverables outlined in Section 2.2 and recorded on Form E. The fiscal information proposed for Phase III discussed in Section 2.3, must be based upon the comprehensive plan detailing all the activities anticipated for a project of this scale submitted by the offeror. This information should specify a price for each deliverable, the timeframe for providing each deliverable and the chronological order of deliverables. The plan with the deliverables and pricing will be used as the basis for the payment

schedule. A total price for the entire Phase IV should be based upon tasks outlined in Section 2.4.

3.3.2 A cover letter transmitting the financial proposal must be signed by an individual authorized to bind the organization to its provisions.

3.3.3 The offeror's proposal must include a statement as to the period during which the provisions of the proposal will remain valid. A minimum of one hundred and eighty (180) calendar days from the "Closing Date for Submission of Proposals" specified in Section 5 is required.

### 3.4 Executive Order 127

To comply with Executive Order 127, the offeror must complete and return with the Financial proposal, the "Contractor Disclosure of Contacts" form (provide a list of all references) and the "Contractor Disclosure of Prior Non-Responsibility Determination" form that are included with this RFP (Form G). Failure to complete and submit these forms shall result in a determination of nonresponsiveness and disqualification of the proposal.

### 3.5 Conflict of Interest

The offeror is required to provide an affirmative statement describing the existence of or potential for, conflict of interest on the part of the offeror due to prior, current, or proposed contracts, engagements, or affiliations.

### 3.6 Method of Award

At the discretion of the Department of Health, all proposals may be rejected. The evaluation of the proposals will include, but not be limited to the following considerations:

#### 3.6.1 Method of Procurement

In order to award a contract, the Department will select the offeror that submits the proposal that offers the best value. The best value basis means awarding the contract for services to the offeror that optimizes quality, cost, and efficiency among all responsive and responsible offerors. This is a competitive procurement which will result in a fixed price contract. The Department reserves the right to request best and final offers from all offerors which submit an acceptable proposal.

#### 3.6.2 Evaluation Committees

The technical and financial proposals will be evaluated specifically by a separate Technical Evaluation Committee and a Financial Evaluation Committee, respectively.

#### 3.6.3 Evaluation Criteria

All proposals received shall be subject to an evaluation, for the purposes

of selecting the offeror with whom a contract will be signed. The following general evaluation criteria will be used to judge each proposal:

3.6.3.1 Responsiveness of the technical proposal to the requirements of the Department specified in this RFP.

3.6.3.2 Expertise of the corporation, the project director and the assigned personnel in each of the areas set forth in Section 1.2; the ability of the corporation to staff the project with qualified personnel.

3.6.3.3 Total cost of the proposal.

Initially, all proposals will be screened to determine responsiveness to RFP requirements. Subsequent to the initial screen, proposals will be evaluated for technical content and cost. The Department intends to select the offeror with the highest total combined score (technical and financial) that is determined to be responsive and responsible.

Technical content will comprise 70% of the score and the cost will comprise 30% of the score. The technical proposal will be based upon three sections of equal weight. The three sections are Offeror Qualifications, Project Leader/Staff, and Statement of Understanding/Proposed Approach/Workplan.

#### 3.6.4 Selection Committee

A selection committee under the direction of the Department will review the recommendations of the evaluation committees as best meeting the requirements of this RFP. From this review, the selection committee will forward this recommendation to Executive Staff for approval.

### 4. Administrative

#### 4.1 General

Upon selection, the successful offeror will be invited to enter into an Agreement with the Department. The contents of the selected offeror's proposal, together with this RFP, amendments to the RFP and any formal questions and answers processed during the procurement process, will be made a part of the final Agreement. Should the selected offeror fail to enter into an Agreement with the Department within thirty calendar days of notification of the award, the Department reserves the right to select another firm and commence negotiations.

The clauses contained in this section will form the basis of the Agreement.

##### 4.1.1 Issuing Agency

This RFP is issued by the NYS Department of Health. The Department

is responsible for the requirements specified herein and for the evaluation of all proposals.

#### 4.1.2 Questions Concerning this RFP

All substantive questions must be submitted in writing on or before 4:30pm on the date specified in Section 5. They should be submitted to:

Stephanie O'Connell, Project Director  
NYS Department of Health  
Office of Medicaid Management  
Division of Information Technology  
800 North Pearl Street, Room 234  
Albany, New York 12204

To the degree possible, each inquiry should cite the RFP section and paragraph to which it refers.

Questions of a technical nature can be addressed in writing to Stephanie O'Connell. Questions are of a technical nature if they are related to how to prepare your proposal (e.g., formatting) rather than relating to the substance of the proposal.

Prospective offerors should note that all clarification and exceptions, including those relating to the terms and conditions of the contract, are to be raised prior to the submission of the proposal.

Written answers to all questions raised will be provided on or before the date specified in Section 5.

#### 4.1.3 Submission of Proposals

Offerors must adhere to the following requirements in submitting a proposal in response to this RFP:

4.1.3.1 The offeror must submit the proposal in two parts: Technical and Financial.

4.1.3.2 Proposals must be sent in two distinct packages showing the following information on the outside:

[Offeror's Name and Address]  
"NYSDOH Business Consultant for eMedNY Fiscal Agent Procurement"  
[Proposal Due Date]  
Either "Technical" or "Financial"

- 4.1.3.3 Six complete copies (one of which contains an original signature) and an electronic version on compact disc of each package should be delivered to:

NYS Department of Health  
Office of Medicaid Management  
Administration Division  
Empire State Plaza  
Corning Tower Room 2019  
Albany, New York 12237  
Attention: Susan Brown  
(518) 486-6830

- 4.1.3.4 Proposals must be received by the Department on or before 3:00 P.M. on the date set forth in Section 5 herein. Any offeror's proposal made in response to this RFP not received by 3:00 P.M. on the closing date for receipt of proposals shall be considered nonresponsive and will not be accepted by the Department.

It is the offeror's responsibility to see that proposals are delivered prior to the date and time of the proposal opening. Late proposals due to delay by the carrier or not received in the Department's mailroom in time for transmission to the above addresses will not be considered.

If the offeror elects mail delivery, the offeror must allow sufficient time to ensure receipt of its proposal by the time specified and should utilize certified or registered mail with return receipt requested.

- 4.1.3.5 To be considered responsive, an offeror must submit complete Technical and Financial proposals which satisfy all the requirements stated in this RFP, each of which states the corporate officer(s) responsible for contract negotiations. Proposals which do not conform to the outline content and sequence as specified in Section 3 will be penalized for nonconformance.

- 4.1.4 In the event of contract award, all products and other documentation produced as part of the contract will become the exclusive property of the Department.

The Department reserves the right, in its discretion, to:

- 4.1.4.1 Reject any or all proposals received in response to this RFP.
- 4.1.4.2 Waive or modify minor irregularities in proposals received after notification to the offeror.

- 4.1.4.3 Adjust or correct cost or cost figures with the concurrence of offeror if errors exist and can be documented to the satisfaction of the Department and the State Comptroller.
- 4.1.4.4 Negotiate with vendors responding to this RFP within the requirements to serve the best interests of the State.
- 4.1.4.5 Eliminate any requirements unmet by all offerors.
- 4.1.4.6 If the Department of Health is unsuccessful in negotiating a contract with the selected vendor within an acceptable time frame, the Department of Health may begin contract negotiations with the next qualified vendor(s) in order to serve and realize the best interests of the State.

Additional reserved rights required for this RFP:

- 4.1.4.7 Accept all or part of a selected offeror's proposal.
- 4.1.4.8 Utilize any and all ideas submitted in the proposals received, unless those ideas are covered by legal patent or proprietary rights.
- 4.1.4.9 Correct computational errors with the written concurrence of the offeror.
- 4.1.4.10 Change start dates stated to the offerors.
- 4.1.4.11 Request offerors to clarify their proposal and/or submit additional information pertaining to their proposal.
- 4.1.4.12 Use reference sources other than those listed in the proposal for verifying the accuracy of the expertise and experience of the corporation and the individuals proposed for the engagement.
- 4.1.4.13 Disqualify any offeror whose conduct or proposal fails to conform to the requirements of this RFP.

#### 4.1.5 Payment

- 4.1.5.1 In consideration of the contractor's performance of the services described in the contract resulting from successful negotiation of this procurement, the State agrees to pay the contractor based upon the prices contained in the approved contract and pursuant to New York State laws.
- 4.1.5.2 The contractor represents and agrees to submit all claims for payment in a form satisfactory to the Department and the Comptroller of the State of New York.

- 4.1.5.3 The Department shall not be liable for the payment of any taxes under this Agreement, however designated, levied or imposed.

Contractor shall submit invoices to the State's designated payment office:

NYS Department of Health  
Office of Medicaid Management  
Division of Information Technology  
800 North Pearl Street - Room 234  
Albany, NY 12204  
Attn: Stephanie O'Connell

Payment of such invoices by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law. Payment terms will be as follows.



Payment for Phase II will be made as deliverables are submitted and approved by the Department according to the chart below. In this chart, the payments totaling 100% are exclusive of payment for the APD and APD-Us. These will be paid upon approval by the Centers for Medicare and Medicaid Services (CMS). The price of one APD-U multiplied by five and the price of the APD will be evaluated.

<b><u>Phase II - RFP Preparation Section 2.2</u></b>		
RFP Section	Description of Deliverable	% to be Paid
2.2.1	Presenting options and recommendations to the Department regarding procurement strategies and approaches, including recommendations on whether the Department should adopt a replacement or redesign strategy as well as accommodating the decision of the Department related to handling of the data warehouse or any subsystem or component in the procurement.	5%
2.2.2	Presenting options and recommendations to the Department regarding which pricing model to employ for the evaluation and selection components of the RFP process and for the contract, (e.g., fixed price, transaction volume based, cost-plus, etc.).	5%
2.2.3	Presenting options and recommendations to the Department regarding which evaluation approach to use for the technical and cost components of the RFP process that will encourage a competitive procurement.	5%
2.2.4	Preparing an RFP to select a fiscal agent who would be responsible for the takeover of the existing eMedNY, with the potential transition to a new system (e.g., enhancements, commercial off-the-shelf software, etc.), including how the procurement of the data warehouse will be handled, currently being operated by Computer Sciences Corporation. This also includes interviewing Department and other appropriate staff to assure that the RFP reflects the current operational state of the system and to solicit suggestions for improving the system.	50%
2.2.5	Participating and documenting the discussions and decisions resulting from any design sessions that may be required.	5%
2.2.7	Preparing a Proposal Evaluation Plan. This is required to be completed before the RFP is released.	15%
2.2.8	Providing any needed procurement assistance to the Department.	5%
2.2.9	Providing evaluation and selection assistance to the Department.	5%
2.2.10	Providing contract and negotiation support to the Department.	5%
	Total fixed price:	100%
2.2.6	Preparing the Advance Planning Document (APD) and up to five Advance Planning Document Updates (APD-Us). The Contractor will be paid the amount on Form E of the proposal upon approval of the APD and each APD-U by the Centers of Medicare and Medicaid Services.	

Payment for Phases I, III and IV (QA, Takeover QA, and Operation and Transition QA) will be based upon the deliverables stated by this RFP in Sections 2.1, 2.3

and 2.4 herein and those proposed by the offeror and approved by Department. The contractor will be paid the fixed amount as presented in the contractor's proposal in equal monthly payments for each phase. At the time of the award, the Department reserves the right to modify the payment schedule proposed by the offeror to achieve a reasonably equitable deliverable-based distribution of all Phases.

The contractor shall fully and properly perform the tasks required by this agreement. The Department will pay the contractor the amounts proposed for such full and proper performance. In the event the contractor fails, in the reasonable judgment of the Department, to properly achieve or finish all milestones and deliverables required, the Department may withhold any or all parts of the contractor billings until such time as all milestones and deliverables are determined by the Department to have been properly achieved or furnished.

Note: The Department reserves the right to not exercise Phase I. Phase III may not be undertaken if the incumbent fiscal agent – Computer Sciences Corporation – is awarded the contract for the fiscal agent and subsequently, the business consultant would not receive payment for those services.

#### 4.1.6 Term of Contract

4.1.6.1 It is expected that the agreement resulting from this RFP will commence on or about September 18, 2006 and continue through June 30, 2014. QA (Phase I), as described in Section 2.1 will commence at the approval of the contract, the RFP Preparation (Phase II), described in Section 2.2, will last twenty-two months. The Takeover QA phase (Phase III), described in Section 2.3, is for the twelve month takeover period and the Operations and Transition QA Phase (Phase IV) as described in Section 2.4, will last the entire new fiscal agent contract.

4.1.6.2 The agreement is subject to amendment only upon mutual consent of the parties, reduced to writing and approved by the Comptroller of the State of New York.

#### 4.2 Standard Contract Provisions

4.2.1 Standard New York State Contract Appendix A, attached hereto as Appendix A, is hereby fully incorporated into this Agreement.

4.2.2 The parties agree that this Agreement shall be construed and interpreted in accordance with the Laws of the State of New York. The contractor shall be required to bring any legal proceeding against the Department or the State arising from this Agreement in New York State courts.

4.2.3 Should any provision of this Agreement be declared or found to be illegal, unenforceable, ineffective or void, then each party shall be relieved of any obligation arising from such provision; the balance of this Agreement, if capable of performance, shall remain in full force and effect.

- 4.2.4 No term or provision of this Agreement shall be deemed waived and no breach consented to, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by a party to, or waiver of, a breach under this Agreement shall not constitute a consent to, a waiver of, or excuse for any other, different or subsequent breach.

#### 4.3 Assurances

- 4.3.1 The contractor warrants that it has carefully reviewed the needs of the Department for the evaluation, as described in this RFP and its attachments and otherwise communicated in writing by the Department to the contractor, that it has familiarized itself with the Department's specifications, and it warrants that it can perform as represented in its Proposal and the other documents incorporated into this Agreement.
- 4.3.2 The contractor agrees that it will perform its obligations hereunder in accordance with all applicable laws, rules and regulations now or hereafter in effect.
- 4.3.3 The contractor warrants and affirms that the terms of this Agreement do not violate any contracts or agreements to which it is a party and that its other contractual obligations will not adversely influence its capabilities to perform under this Agreement.
- 4.3.4 The contractor acknowledges that all material and information which has or will come into the possession or knowledge of each person assigned to this project in connection with this Agreement or the performance hereof, consists of confidential and proprietary data, whose disclosure to or use by third parties will be damaging. The contractor therefore agrees to hold such material and information in the strictest confidence, not to make use thereof other than for the performance of this Agreement, and to release it only to employees requiring such information, and not to release or disclose it to any other party. The contractor agrees not to release such information or material to any employee who has not signed a written agreement expressly binding himself to use it only for purposes of performance under the Agreement and agreeing not to disclose it to other parties.

#### 4.4 Contractor Requirements

The contractor accepts sole and complete responsibility for the timely accomplishment of all activities required under this Agreement:

- 4.4.1 The contractor represents and agrees to establish appropriate means to ensure ongoing communication between the Department and the contractor so as to inform the Department of significant program developments. The contractor agrees to submit in writing to the Department, within ten (10) business days of occurrence, a description of any and each problem which threatens the successful timely completion of any aspect of this contract, together with a

recommendation for resolution whenever possible. Upon receipt of such written description, the Department agrees to respond to the contractor in writing, offering its appraisal of the situation and recommendation for further course of action.

- 4.4.2 The contractor shall prepare, in a format to be prescribed by the Department, monthly reports describing work performance and providing such other information as may be required on project activities. The contractor shall maintain in its own records, for review by the Department, a list of all staff interviewed for preparation of such reports.
- 4.4.3 The contractor shall prepare, in a format prescribed by the Department, a quarterly report describing the efforts of the contractor to comply with the provisions of Appendix D, Section W of this RFP, Affirmative Action Plan requirements. This affirmative action quarterly report shall include, but not be limited to, personnel actions that have resulted in changes in the Staffing Plan submitted with the contract and analysis of total awards/expenditures to subcontractors and vendors. The contractor agrees to make available to the Department, on request, the information and data used in compiling such reports.
- 4.4.4 The contractor agrees to provide the Department with an operating Protocol establishing which employees, subcontractors, and other agents of the contractor will have access to information provided by the Department to the contractor and to information about the contractor's operation for the Department and the information documents, and systems developed by the contractor pursuant to this Agreement. Internal disclosures of any such information beyond those provided for in the Protocol will be made only with the consent of the Department Project Director.
- 4.4.5 The contractor shall perform in accordance with the specifications contained in Section 2.

#### 4.5 Rights of the Department

- 4.5.1 All documents produced for the Department become the property of the State of New York; however, the parties agree that the United States Department of Health and Human Services reserves the royalty-free, non-exclusive and irrevocable license to produce, publish or otherwise use such documents and to authorize others to do so for government purposes. The rights to copyright any material developed hereunder shall be with the Department.
- 4.5.2 The contractor agrees that information, documents and systems developed pursuant to the Agreement are the property of the State of New York and that the contractor will not discuss such information, documents and systems with a third party without the express authorization of the Department. The Department will provide authorization for the contractor's communication with third parties by supplying them with a list of those third parties with whom the contractor

will be allowed to discuss matters concerning this project. This list will be kept current by the Department and may also detail the limitations of such communications.

#### 4.6 Document Incorporation and Order of Precedence

4.6.1 The contract resulting from this RFP will consist of the standard boilerplate "State of New York Agreement" (sample provided in the appendices section of this RFP), together with all the attachments and appendices attached thereto, as indicated on the contract cover page, including the RFP and the contractor's proposal.

4.6.2 In the event of any inconsistency in or conflict among the document elements of the contract, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order:

4.6.2.1 Appendix A;

4.6.2.2 "State of New York Agreement" document including the cover page;

4.6.2.3 Appendix B (RFP);

4.6.2.4 Appendix D (general specifications); and

4.6.2.5 Appendix C (Contractor proposal).

#### 4.7 Interpretation and Disputes

This Agreement shall be construed and interpreted in accordance with the Laws of the State of New York.

Except as otherwise provided for in this Agreement, any dispute which is not disposed of by agreement shall be submitted in writing to and decided by the Commissioner of the Department of Health (Commissioner) or his/her duly authorized representative(s) or designee(s).

If the contractor is unwilling to accept the decision of the Commissioner, or if a decision is not made within ninety (90) calendar days, it may then pursue its normal legal remedies, but it is specifically agreed that any and all reports made by the Commissioner upon the disagreement at issue shall be admissible as evidence in any court action taken with respect to the matter. Pending conclusion of any dispute or disagreement by whatever procedure, the construction placed upon the Agreement by the Department shall govern operation thereunder and the contractor shall continue to perform under the agreement.

The contractor shall be required to bring all legal proceedings against the Department in the Courts of the State of New York.

#### 4.8 Indemnification of the Department

The contractor agrees to indemnify the State of New York for any loss the State of New York may suffer when such losses result from claims of any person or organization (excepting only the Department) injured by the negligent acts or omission of the contractor, its officers and/or employees or subcontractors. Furthermore, the contractor agrees to indemnify, defend, and save harmless the State of New York, its officers, agents, and employees from:

- 4.8.1 Any and all claims and losses accruing or resulting to any and all contractors, subcontractors, and any other persons, firms, or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement who may be injured or damaged by the contractor in the performance of this Agreement; and
- 4.8.2 From all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the contractor in the performance of this Agreement. Further, the contractor agrees to indemnify, defend, and save harmless the State of New York, its officers, agents, and employees against any liability, including costs and expenses, for violation of proprietary rights, copyrights or rights of privacy, arising out of the publications, translations, reproduction, delivery, performance use, or disposition of any data or written material furnished under this Agreement, or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this Agreement.

#### 4.9 Access to and Audit of Agreement Records

- 4.9.1 All records and information obtained by the Department pursuant to the provisions of this Agreement, whether by audit or otherwise, shall be usable by the Department, solely for the purpose of performing this Agreement in any manner, in its sole discretion, as it deems appropriate and the contractor shall have no right of confidentiality or proprietary interest in such records or information. Notwithstanding the preceding sentence and in addition to the provisions set forth in Appendix A, the Department agrees that it will release only to those government agencies involved in the oversight or performance of this Agreement, and then only to the personnel who are involved in the oversight or performance, the following data:
  - 4.9.1.1 Any resume or other description of qualifications which includes the name of the individual; and
  - 4.9.1.2 Any individual's actual salary.
- 4.9.2 The contractor shall promptly notify the Department of any request by anyone for access to any records maintained pursuant to this Agreement. Access by Federal or State bank regulatory agents, or contractor's regular outside auditors to contractor's financial records,

pursuant to regularly scheduled or routine audits or inspection of contractor, shall not require notification to the Department provided that rights of confidentiality or proprietary interests are preserved.

- 4.9.3 The contractor shall be responsible for assuring that the provisions in this Section shall apply to any subcontract related to performance under this Agreement.

#### 4.10 Confidentiality of Information

The contractor, its officers, agents and employees and subcontractors, shall treat all information, with particular emphasis on information relating to recipients and providers, which is obtained by it through its performance under this Agreement, as confidential information to the extent required by the Laws of the State of New York and of the United States and any regulations promulgated thereunder.

- 4.10.1 Individually identifiable information relating to any eligible recipient or provider shall be held confidential and shall not be disclosed by the contractor, its officers, agents and employees or subcontractors, without the prior written approval of the Commissioner or a designee. (See Appendix D - Social Services Law Section 136, Protection of public welfare records)
- 4.10.2 The use of information obtained by the contractor in the performance of its duties under this Agreement shall be limited to purposes directly connected with such duties.
- 4.10.3 The contractor shall promptly advise the Department of all requests made to contractor for information described in Section 4.10.1 above.
- 4.10.4 The contractor shall be responsible for assuring that any agreement between the contractor and any of its officers, agents and employees or subcontractors contains a provision which strictly conforms to the provisions of this subsection.
- 4.10.5 The contractor recognizes that information, both that provided by the Department and that developed by the contractor, which it possesses as a result of this agreement is confidential information and shall not be disclosed internally or externally except pursuant to Section 4.4.4 herein without the consent of the Department Project Director.

#### 4.11 Lobbying Certification

Section 1352 of Title 31 of the U.S. Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal contractor or grantee (such as the State) must be required to certify that no Federal funds will be used to lobby or influence a Federal officer or a Member of Congress. The certification the State has been required to sign for HHS provides that the language of this certification (shall) be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under

grants, loans, and cooperative agreements), and that all sub-recipients shall certify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-recipient, the contractor understands and agrees to the Federal requirements for certification and disclosure.

#### 4.12 Termination of the Agreement

The Agreement shall be subject to the following termination provisions and may be terminated:

4.12.1 By mutual written agreement of the contracting parties.

4.12.2 By the Department for cause upon the failure of the contractor to perform within the time requirements set forth in this Agreement or its failure to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving contractor's receipt therefore, such written notice to specify the contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.

4.12.3 By the Department for convenience, if the Department deems that termination would be in the best interest of the State, provided that the Department shall give written notice to the contractor no less than thirty (30) calendar days prior to the date upon which termination shall become effective, such notice to be made via registered or certified mail, return receipt requested or hand-delivered with receipt made. The date of such notice shall be deemed to be the date of postmark in the case of mail or the date of contractor's receipt for notice in the case of hand-delivery. In the case of termination under this subsection, the Department agrees to pay the contractor for reasonable and appropriate expenses incurred in good faith. The contractor, on its part, agrees to incur no new obligations after receipt of notification of termination and to cancel as many outstanding obligations as possible.

4.12.4 At the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the contractor.

4.12.5 Should the Department determine that Federal and State funds are unavailable, the Department may deem the Agreement terminated immediately. The Department agrees to give timely notice to the contractor in the event of termination under this paragraph. If the initial notice is oral notification, the Department shall follow this up immediately



with written notice. The Department will be obligated to pay the contractor only for the expenditures made and obligations incurred by the contractor until such time as notice of termination is received either orally or in writing by the contractor from this Department.

4.12.6 If this Agreement is terminated for cause, the Department shall have the right to award a new contract. In the event of a termination for cause, the contractor shall be responsible for damages and for all additional costs incurred in awarding the new contract.

4.12.7 (a) The contractor agrees not to engage in any conduct which the contractor knows would violate or would assist an employee of the Department in violating Sections 73 and 74 of the Public Officers Law.

(b) The contractor further recognizes that an administrative or judicial finding that a contractor has violated any of the statutes specified in the contractor/Subcontractor Background Questionnaire completed prior to the award of this agreement may entitle the Department to terminate the contract, at its discretion, within thirty (30) calendar days after the Department notified the contractor that it has become aware of such finding.

(c) Any termination of the contract by the Department under this subdivision shall be deemed to be a termination of the contract for cause.

## 5. Timetable

RFP Release	March 27, 2006
Letter of Intent	April 3, 2006
Submission of Written Questions	April 19, 2006
Written Response to Questions Provided	May 1, 2006
Closing Date for Submission of Proposals	May 19, 2006
Proposal Evaluation Completed	June 30, 2006
Selection Announced	July 14, 2006
Contract Start Date	September 18, 2006

6. Required Forms for Submission  
(Technical)

**NEW YORK STATE DEPARTMENT OF HEALTH  
FORM A  
OFFEROR IDENTIFICATION**

NYS DOH Use	Offeror #
Date Received:	
DE By/Date:	

Firm/Provider:		
Address:		
City:	State:	Zip:
If Outside U.S.A.: Providence:		Country:

Employee ID Number: (Required)	Additional PIN:	Telephone:	Fax Number:
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Authorized Person (Name/Title)	Signature:
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**General Purpose:**

To identify those qualified potential offerors of services and goods who may be interested in responding to related, competitively bid, Request for Proposals (RFPs), as issued by the Department.

**Employer Payee-ID:**

Federal payee identification number or social security number used for your federal income tax report.

**Return the Completed Form with Your Technical Proposal to:**

NYS Department of Health  
Division of Information Technology  
Office of Medicaid Management  
800 North Pearl Street  
Room 234  
Albany, New York 12204

**NEW YORK STATE DEPARTMENT OF HEALTH**

**FORM B  
RESPONSIBLE OFFICERS**

NAME	TITLE	RESPONSIBILITY

**USE ADDITIONAL SHEETS IF NECESSARY**

NEW YORK STATE DEPARTMENT OF HEALTH

FORM C  
SUBCONTRACTOR ORGANIZATION

1) Name of subcontractor organization: \_\_\_\_\_

2) Address of subcontractor organization: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please identify all of the terms below which apply to the subcontractor's organization:

	YES	NO
Non-Profit Organization	_____	_____
Small Business	_____	_____
Minority Business	_____	_____
Women-Owned Business	_____	_____

3) List responsible officers including those individuals authorized to negotiate for subcontractor.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4) Described services/materials to be supplied by the subcontractor under the project and mechanisms for assuring effective and efficient operations.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5) List any financial interest subcontractor has in the offering organization.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NEW YORK STATE DEPARTMENT OF HEALTH**

**FORM C  
SUBCONTRACTOR ORGANIZATION  
(Continued)**

- 6) List any financial interest offeror has in proposed subcontractors.

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- 7) Provide evidence of potential subcontractor willingness to participate or enter into subcontractual arrangements.

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**FORM D  
LITIGATION**

- [illegible]

- [illegible]



7. Required Forms for Submission  
(Financial)

**NEW YORK STATE  
DEPARTMENT OF HEALTH  
BID FORM**

PROCUREMENT TITLE: \_\_\_\_\_ FAU # \_\_\_\_\_

Bidder Name:

Bidder Address:

Bidder Fed ID No:

A. \_\_\_\_\_ bids a total price of \$ \_\_\_\_\_  
(Name of Offerer/Bidder)

B. Offerer/Bidder affirms that it understands and agrees to comply with the procedures of the Department of Health relative to permissible contacts (provided below) as required by State Finance Law §139-j (3) and §139-j (6) (b).

Pursuant to State Finance Law §§139-j and 139-k, this *Invitation for Bid or Request for Proposal* includes and imposes certain restrictions on communications between the Department of Health (DOH) and an Offerer during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit *bids/proposals* through final award and approval of the Procurement Contract by the DOH and, if applicable, Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is/are identified on the first page of this *Invitation for Bid or Request for Proposal*. DOH employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the Office of General Services Website at <http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>

C. Offerer/Bidder provides the following disclosure of prior non-responsibility determinations

1. Has any Governmental Entity made a finding of non-responsibility regarding the Offerer/bidder in the previous four years? (Please circle):

No Yes

If **yes**, please answer the next questions:

1a. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j or NYS Executive Order No. 127? (Please circle):

No Yes

1b. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No Yes

If you answered **yes** to question C1, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Add additional pages as necessary)

2. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No Yes

If **yes**, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Add additional pages as necessary)

D. Offerer/Bidder certifies that all information provided to the Department of Health with respect to State Finance Law §139-k is complete, true and accurate.

E. Offerer/Bidder agrees to provide the following documentation with their submitted bid/proposal:

1. A completed N.Y.S Taxation and Finance Contractor Certification Form ST-220.
2. A completed Contractor Disclosure of Contact form(s) as required in N.Y.S. Executive Order No. 127.
3. A completed N.Y.S. Office of the State Comptroller Vendor Responsibility Questionnaire (for procurements greater than or equal to \$100,000)

\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Officer Title)

\_\_\_\_\_  
(Telephone)

\_\_\_\_\_  
(e-mail Address)

**NEW YORK STATE  
DEPARTMENT OF HEALTH**

**NO-BID FORM**

PROCUREMENT TITLE: \_\_\_\_\_ FAU # \_\_\_\_\_

Bidders choosing not to bid are requested to complete the portion of the form below:

- ☐ We do not provide the requested services. Please remove our firm from your mailing list
- ☐ We are unable to bid at this time because:

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Please retain our firm on your mailing list.

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(Firm Name)

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<hr/> <p>(Officer Signature)</p>	<hr/> <p>(Date)</p>
<hr/> <p>(Officer Title)</p>	<hr/> <p>(Telephone)</p>
	<hr/> <p>(e-mail Address)</p>

FAILURE TO RESPOND TO BID INVITATIONS MAY RESULT IN YOUR FIRM BEING REMOVED FROM OUR MAILING LIST FOR THIS SERVICE.

## Form E (con't)

For each task described in Section 2 of this Request for Proposal (RFP) offerors are to complete the appropriate section below. The price of one APD-U multiplied by five will be used.

<b>Phase I</b>		
9/18/06-6/30/07	\$ -	
7/1/07-6/30/08	\$ -	
7/1/08-6/30/09	\$ -	
Six one-month extensions option (price per month)	\$ -	
Per month X 6 =	\$ -	
Phase I Total		\$ -
<b>Phase II</b>		
Total Fixed Price (Not including APD or APD-U's)	\$ -	
Price for APD approved by CMS	\$ -	
Price for APD-U approved by CMS  \$ _____ x 5 =	\$ -	
Phase II Total		\$ -
<b>Phase III</b>		
7/1/08-6/30/09		\$ -
<b>Phase IV</b>		
7/1/09-6/30/10	\$ -	
7/1/10-6/30/11	\$ -	
7/1/11-6/30/12	\$ -	
7/1/12-6/30/13	\$ -	
7/1/13-6/30/14	\$ -	
Phase IV Total		\$ -

## Vendor Responsibility

New York State Procurement laws and guidelines require that state agencies award contracts only to responsible vendors. Vendor responsibility means that a vendor has the integrity to justify the award of public dollars and the capacity to fully perform the requirements of the contract. It is a contracting agency's responsibility, under Section 163 (9) f of the State Finance Law (SFL), to evaluate and make a determination of the responsibility of a prospective contractor. A responsibility determination, wherein the contracting agency determines that it has reasonable assurances that a vendor is responsible, is an important part of the procurement process, promoting fairness in contracting and protecting a contracting agency and the State against failed contracts. Additionally, the State Comptroller must be satisfied that a proposed contractor is responsible before approving a contract award under Section 112 of the SFL.

The following factors are to be considered in make a responsibility determination:

- legal authority to do business in New York State;
- integrity;
- capacity – both organizational and financial; and
- previous performance.

Additional information concerning vendor responsibility may be found at the Office of the State Comptroller's (OSC) website:

<http://nyosc3.osc.state.ny.us/agencies/gbull/b221.htm> .

Detailed interpretation of frequently asked questions regarding vendor responsibility may also be found at the OSC website:

<http://www.osc.state.ny.us/vendrep/faqs.htm>.

Attachment 4 contains the "Vendor Responsibility Questionnaire" for use by all applicants other than municipalities or other local governments. The selected applicant will be required to complete the Vendor Responsibility Questionnaire if applicable to your organization. Awards will not be given to non-governmental applicants who do not complete the questionnaire.

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER  
VENDOR RESPONSIBILITY QUESTIONNAIRE

FEIN #

<b>1. VENDOR IS:</b> <input type="checkbox"/> PRIME CONTRACTOR <input type="checkbox"/> SUB-CONTRACTOR			
<b>2. VENDOR'S LEGAL BUSINESS NAME</b>		<b>3. IDENTIFICATION NUMBERS</b> a) FEIN #  b) DUNS #	
<b>4. D/B/A – Doing Business As</b> (if applicable) & <b>COUNTY FILED:</b>		<b>5. WEBSITE ADDRESS</b> (if applicable)	
<b>6. ADDRESS OF PRIMARY PLACE OF BUSINESS/EXECUTIVE OFFICE</b>		<b>7. TELEPHONE NUMBER</b>	<b>8. FAX NUMBER</b>
<b>9. ADDRESS OF PRIMARY PLACE OF BUSINESS/EXECUTIVE OFFICE</b> <i>IN NEW YORK STATE</i> , if different from above		<b>10. TELEPHONE NUMBER</b>	<b>11. FAX NUMBER</b>
<b>12. PRIMARY PLACE OF BUSINESS IN NEW YORK STATE IS:</b>  <input type="checkbox"/> Owned <input type="checkbox"/> Rented  If rented, please provide landlord's name, address, and telephone number below:		<b>13. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE</b>  Name Title Telephone Number Fax Number e-mail	
<b>14. VENDOR'S BUSINESS ENTITY IS</b> (please check appropriate box and provide additional information):			
<b>a) <input type="checkbox"/> Business Corporation</b>	<b>Date of Incorporation</b>	<b>State of Incorporation*</b>	
<b>b) <input type="checkbox"/> Sole Proprietor</b>	<b>Date Established</b>		
<b>c) <input type="checkbox"/> General Partnership</b>	<b>Date Established</b>		
<b>d) <input type="checkbox"/> Not-for-Profit Corporation</b>	<b>Date of Incorporation</b>	<b>State of Incorporation*</b> <b>Charities Registration Number</b>	
<b>e) <input type="checkbox"/> Limited Liability Company (LLC)</b>	<b>Date Established</b>		
<b>f) <input type="checkbox"/> Limited Liability Partnership</b>	<b>Date Established</b>		
<b>g) <input type="checkbox"/> Other – Specify:</b>	<b>Date Established</b>	<b>Jurisdiction Filed (if applicable)</b>	
* If not incorporated in New York State, please provide a copy of authorization to do business in New York.			
<b>15. PRIMARY BUSINESS ACTIVITY -</b> (Please identify the primary business categories, products or services provided by your business)			
<b>16. NAME OF WORKERS' COMPENSATION INSURANCE CARRIER:</b>			
<b>17. LIST ALL OF THE VENDOR'S PRINCIPAL OWNERS AND THE THREE OFFICERS WHO DIRECT THE DAILY OPERATIONS OF THE VENDOR</b> (Attach additional pages if necessary):			
<b>a) NAME</b> (print)	<b>TITLE</b>	<b>b) NAME</b> (print)	<b>TITLE</b>
<b>c) NAME</b> (print)	<b>TITLE</b>	<b>d) NAME</b> (print)	<b>TITLE</b>

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VENDOR RESPONSIBILITY QUESTIONNAIRE

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**A DETAILED EXPLANATION IS REQUIRED FOR EACH QUESTION ANSWERED WITH A “YES,” AND MUST BE PROVIDED AS AN ATTACHMENT TO THE COMPLETED QUESTIONNAIRE. YOU MUST PROVIDE ADEQUATE DETAILS OR DOCUMENTS TO AID THE CONTRACTING AGENCY IN MAKING A DETERMINATION OF VENDOR RESPONSIBILITY. PLEASE NUMBER EACH RESPONSE TO MATCH THE QUESTION NUMBER.**

<b>18.</b>	Is the vendor certified in New York State as a (check please): <input type="checkbox"/> Minority Business Enterprise (MBE) <input type="checkbox"/> Women’s Business Enterprise (WBE) <input type="checkbox"/> Disadvantaged Business Enterprise (DBE)? <i>Please provide a copy of any of the above certifications that apply.</i>	□ Yes   □ No
<b>19.</b>	Does the vendor use, or has it used in the past ten (10) years, any other Business Name, FEIN, or D/B/A other than those listed in items 2-4 above? <i>List all other business name(s), Federal Employer Identification Number(s) or any D/B/A names and the dates that these names or numbers were/are in use. Explain the relationship to the vendor.</i>	□ Yes   □ No
<b>20.</b>	Are there any individuals now serving in a managerial or consulting capacity to the vendor, including principal owners and officers, who now serve or in the past three (3) years have served as:  <div style="margin-left: 20px;"><b>a)</b> An elected or appointed public official or officer? <i>List each individual’s name, business title, the name of the organization and position elected or appointed to, and dates of service.</i> <span style="float: right;">□ Yes   □ No</span></div> <div style="margin-left: 20px;"><b>b)</b> A full or part-time employee in a New York State agency or as a consultant, in their individual capacity, to any New York State agency? <i>List each individual’s name, business title or consulting capacity and the New York State agency name, and employment position with applicable service dates.</i> <span style="float: right;">□ Yes   □ No</span></div> <div style="margin-left: 20px;"><b>c)</b> If yes to item #20b, did this individual perform services related to the solicitation, negotiation, operation and/or administration of public contracts for the contracting agency? <i>List each individual’s name, business title or consulting capacity and the New York State agency name, and consulting/advisory position with applicable service dates. List each contract name and assigned NYS number.</i> <span style="float: right;">□ Yes   □ No</span></div> <div style="margin-left: 20px;"><b>d)</b> An officer of any political party organization in New York State, whether paid or unpaid? <i>List each individual’s name, business title or consulting capacity and the official political party position held with applicable service dates.</i> <span style="float: right;">□ Yes   □ No</span></div>	



STATE OF NEW YORK  
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VENDOR RESPONSIBILITY QUESTIONNAIRE

FEIN #

<p><b>21.</b> Within the past five (5) years, has the vendor, any individuals serving in managerial or consulting capacity, principal owners, officers, major stockholder(s) (10% or more of the voting shares for publicly traded companies, 25% or more of the shares for all other companies), affiliate<sup>1</sup> or any person involved in the bidding or contracting process:</p> <p><b>a)</b> 1. been suspended, debarred or terminated by a local, state or federal authority in connection with a contract or contracting process;</p> <p>2. been disqualified for cause as a bidder on any permit, license, concession franchise or lease;</p> <p>3. entered into an agreement to a voluntary exclusion from bidding/contracting;</p> <p>4. had a bid rejected on a New York State contract for failure to comply with the MacBride Fair Employment Principles;</p> <p>5. had a low bid rejected on a local, state or federal contract for failure to meet statutory affirmative action or M/WBE requirements on a previously held contract;</p> <p>6. had status as a Women's Business Enterprise, Minority Business Enterprise or Disadvantaged Business Enterprise denied, de-certified, revoked or forfeited;</p> <p>7. been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any local, state or federal government contract;</p> <p>8. been denied an award of a local, state or federal government contract, had a contract suspended or had a contract terminated for non-responsibility; or</p> <p>9. had a local, state or federal government contract suspended or terminated for cause prior to the completion of the term of the contract?</p>	<p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
<p><b>b)</b> been indicted, convicted, received a judgment against them or a grant of immunity for any business-related conduct constituting a crime under local, state or federal law including but not limited to, fraud, extortion, bribery, racketeering, price-fixing, bid collusion or any crime related to truthfulness and/or business conduct?</p>	<p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p>

STATE OF NEW YORK  
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VENDOR RESPONSIBILITY QUESTIONNAIRE

FEIN #

<p><b>c)</b> been issued a citation, notice, violation order, or are pending an administrative hearing or proceeding or determination for violations of:</p> <ol style="list-style-type: none"> <li>1. federal, state or local health laws, rules or regulations, including but not limited to Occupational Safety &amp; Health Administration (OSHA) or New York State labor law;</li> <li>2. state or federal environmental laws;</li> <li>3. unemployment insurance or workers' compensation coverage or claim requirements;</li> <li>4. Employee Retirement Income Security Act (ERISA);</li> <li>5. federal, state or local human rights laws;</li> <li>6. civil rights laws;</li> <li>7. federal or state security laws;</li>   <li>8. federal Immigration and Naturalization Services (INS) and Alienage laws;</li> <li>9. state or federal anti-trust laws; or</li> <li>10. charity or consumer laws?</li> </ol> <p><b><i>For any of the above, detail the situation(s), the date(s), the name(s), title(s), address(es) of any individuals involved and, if applicable, any contracting agency, specific details related to the situation(s) and any corrective action(s) taken by the vendor.</i></b></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>22.</b> In the past three (3) years, has the vendor or its affiliates<sup>1</sup> had any claims, judgments, injunctions, liens, fines or penalties secured by any governmental agency?</p> <p><b><i>Indicate if this is applicable to the submitting vendor or affiliate. State whether the situation(s) was a claim, judgment, injunction, lien or other with an explanation. Provide the name(s) and address(es) of the agency, the amount of the original obligation and outstanding balance. If any of these items are open, unsatisfied, indicate the status of each item as "open" or "unsatisfied."</i></b></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>23.</b> Has the vendor (for profit and not-for profit corporations) or its affiliates<sup>1</sup>, in the past three (3) years, had any governmental audits that revealed material weaknesses in its system of internal controls, compliance with contractual agreements and/or laws and regulations or any material disallowances?</p> <p><b><i>Indicate if this is applicable to the submitting vendor or affiliate. Detail the type of material weakness found or the situation(s) that gave rise to the disallowance, any corrective action taken by the vendor and the name of the auditing agency.</i></b></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p><b>24.</b> Is the vendor exempt from income taxes under the Internal Revenue Code?</p> <p><b><i>Indicate the reason for the exemption and provide a copy of any supporting information.</i></b></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

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FEIN #

25.	<p>During the past three (3) years, has the vendor failed to:</p> <p>a) file returns or pay any applicable federal, state or city taxes? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><b>Identify the taxing jurisdiction, type of tax, liability year(s), and tax liability amount the vendor failed to file/pay and the current status of the liability.</b></p> <p>b) file returns or pay New York State unemployment insurance? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p><b>Indicate the years the vendor failed to file/pay the insurance and the current status of the liability.</b></p>	
26.	<p>Have any bankruptcy proceedings been initiated by or against the vendor or its affiliates<sup>1</sup> within the past seven (7) years (whether or not closed) or is any bankruptcy proceeding pending by or against the vendor or its affiliates regardless of the date of filing?</p> <p><b>Indicate if this is applicable to the submitting vendor or affiliate. If it is an affiliate, include the affiliate's name and FEIN. Provide the court name, address and docket number. Indicate if the proceedings have been initiated, remain pending or have been closed. If closed, provide the date closed.</b></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
27.	<p>Is the vendor currently insolvent, or does vendor currently have reason to believe that an involuntary bankruptcy proceeding may be brought against it?</p> <p><b>Provide financial information to support the vendor's current position, for example, Current Ratio, Debt Ratio, Age of Accounts Payable, Cash Flow and any documents that will provide the agency with an understanding of the vendor's situation.</b></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
28.	<p>Has the vendor been a contractor or subcontractor on any contract with any New York State agency in the past five (5) years?</p> <p><b>List the agency name, address, and contract effective dates. Also provide state contract identification number, if known.</b></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
29.	<p>In the past five (5) years, has the vendor or any affiliates<sup>1</sup>:</p> <p>a) defaulted or been terminated on, or had its surety called upon to complete, any contract (public or private) awarded;</p> <p>b) received an overall unsatisfactory performance assessment from any government agency on any contract; or</p> <p>c) had any liens or claims over \$25,000 filed against the firm which remain undischarged or were unsatisfied for more than 90 days?</p> <p><b>Indicate if this is applicable to the submitting vendor or affiliate. Detail the situation(s) that gave rise to the negative action, any corrective action taken by the vendor and the name of the contracting agency.</b></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

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<sup>1</sup> "Affiliate" meaning: (a) any entity in which the vendor owns more than 50% of the voting stock; (b) any individual, entity or group of principal owners or officers who own more than 50% of the voting stock of the vendor; or (c) any entity whose voting stock is more than 50% owned by the same individual, entity or group described in clause (b). In addition, if a vendor owns less than 50% of the voting stock of another entity, but directs or has the right to direct such entity's daily operations, that entity will be an "affiliate" for purposes of this questionnaire.

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER  
VENDOR RESPONSIBILITY QUESTIONNAIRE

FEIN #

State of:                                 )  
  ) ss:  
County of:                                 )

**CERTIFICATION:**

The undersigned: recognizes that this questionnaire is submitted for the express purpose of assisting the State of New York or its agencies or political subdivisions in making a determination regarding an award of contract or approval of a subcontract; acknowledges that the State or its agencies and political subdivisions may in its discretion, by means which it may choose, verify the truth and accuracy of all statements made herein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine and/or imprisonment of up to five years under 18 USC Section 1001 and may result in contract termination; and states that the information submitted in this questionnaire and any attached pages is true, accurate and complete.

The undersigned certifies that he/she:

- has not altered the content of the questions in the questionnaire in any manner;
- has read and understands all of the items contained in the questionnaire and any pages attached by the submitting vendor;
- has supplied full and complete responses to each item therein to the best of his/her knowledge, information and belief;
- is knowledgeable about the submitting vendor's business and operations;
- understands that New York State will rely on the information supplied in this questionnaire when entering into a contract with the vendor; and
- is under duty to notify the procuring State Agency of any material changes to the vendor's responses herein prior to the State Comptroller's approval of the contract.

Name of Business

Signature of Owner/Officer\_\_\_\_\_

Address

Printed Name of Signatory

City, State, Zip

Title

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

All offerors **must** include the two EO127 Contractor Disclosure forms with their bid proposal. Offerors must complete a Contractor Disclosure of Contacts form for each individual entity they have retained, employed or designated to attempt to influence the procurement process. Offerors must also complete and provide the Contractor Disclosure of Prior Non-Responsibility Determinations form. **Failure to provide either of these forms with the bid proposal could result in disqualification from the bid competition.**

## Executive Order 127

### *Mandatory Vendor Disclosure Requirements*

In June 2003, Governor Pataki signed Executive Order 127 (EO 127) providing for additional disclosure in the State's procurement process.

#### **In general, EO127 requires that:**

- potential bidders and selected contractors disclose to the procuring agency all persons retained, employed or designated by or on behalf of any bidder to attempt to influence the procurement process, and whether that person has a financial interest in the procurement (Contractor Disclosure of Contacts form);
- a determination of vendor responsibility must be made by the procuring agency as a part of the selection decision, including consideration of a failure to comply with the requirements of EO 127 (Contractor Disclosure of Prior Non-Responsibility Determinations form);
- all procurement contracts include language certifying that the vendor has disclosed all parties retained, employed or designated by or on behalf of the vendor to influence the procurement process; and all procurement contracts contain language allowing termination of the contract if the certification is found to be intentionally false or intentionally incomplete.

#### **What does this mean for bidders?**

All bidders **must** include the two EO127 Contractor Disclosure forms with their bid proposal. Bidders must complete a Contractor Disclosure of Contacts form for each individual entity they have retained, employed or designated to attempt to influence the procurement process. Bidders must also complete and provide the Contractor Disclosure of Prior Non-Responsibility Determinations form. **Failure to provide either of these forms with the bid proposal will result in disqualification from the bid competition.**



## Executive Order #127

## CONTRACTOR DISCLOSURE OF CONTACTS

This form shall be completed and submitted with your bid/proposal or offer. Failure to complete and submit this form shall result in a determination of non-responsiveness and disqualification of the bid, proposal or offer. If at the time of submission of this form, the specific name of a person authorized to attempt to influence a decision on your behalf is unknown, you agree to provide the specific person's information when it is available. You also agree to update this information during the negotiation or evaluation process of this procurement, and throughout the term of any contract awarded to your company pursuant to this bid/proposal or offer.

NAME OF PROCUREMENT: \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

NAME OF PERSON SUBMITTING THIS FORM: \_\_\_\_\_

TITLE: \_\_\_\_\_

Is this an initial filing in accordance with Section II, paragraph 1 of EO 127 or an updated filing in accordance with Section II, paragraph 2 of EO 127?

☐ INITIAL FILING☐ UPDATED FILING

The following person or organization was retained, employed or designated by or on behalf of the Contractor to attempt to influence the procurement process:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

PLACE OF PRINCIPAL EMPLOYMENT: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

Does the above named person or organization have a financial interest in the procurement?

☐ YES☐ NO**DEFINITIONS:**

**"Financial Interest in procurement" shall mean:**

- (a) owning or exercising direct or indirect control over, or owning a financial interest of more than one percent in, a contractor or other entity that stands to gain or benefit financially from the award of a procurement contract; or
- (b) receiving, expecting or attempting to receive compensation, fees, remuneration or other financial gain or benefit from a contractor or other individual or entity that stands to benefit financially from a procurement contract; or
- (c) being compensated by, or being a member of, an entity or organization which is receiving, expecting or attempting to receive compensation, fees, remuneration or other financial gain from a contractor or other individual or entity that stands to benefit financially from a procurement contract; or
- (d) receiving, expecting or attempting to receive any other financial gain or benefit as a result of the procurement contract; or
- (e) being a relative of a person with a financial interest in the procurement, as set forth in paragraphs (a) through (d) above. For purposes of this paragraph, "relative" shall mean spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of an individual listed in paragraphs (a) through (d) above or of the individual's spouse.

(REV-8/20/03)



## Executive Order #127

### CONTRACTOR DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

NAME OF CONTRACTOR: \_\_\_\_\_

ADDRESS: Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

NAME OF PERSON SUBMITTING THIS FORM: \_\_\_\_\_

TITLE: \_\_\_\_\_

Has any covered agency or authority made a finding of non-responsibility regarding the Contractor in the last five years?

☐ YES

☐ NO

If Yes, was the basis for the finding of the Contractor's non-responsibility due to the intentional provision of false or incomplete information required by Executive Order Number 127?

☐ YES

☐ NO

If Yes, please provide details regarding the finding of non-responsibility below:

COVERED AGENCY OR AUTHORITY: \_\_\_\_\_

YEAR OF FINDING OF NON-RESPONSIBILITY: \_\_\_\_\_

BASIS OF FINDING OF NON-RESPONSIBILITY:




New York State Department of Taxation and Finance

**Contractor Certification**

(Pursuant to Section 5-a of the Tax Law)

For more information, see Publication 222, *Question and Answers Concerning Tax Law Section 5-a*.

Contractor name				For office use only Contract number
Contractor's principal place of business	City	State	ZIP code	
Mailing address (if different than above)				Estimated contract value
Contractor's federal employer identification number (EIN)		Contractor's sales tax ID number (if different from contractor's EIN)		
Contractor's telephone number ( )		Contracting state agency		\$

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and that:

**Part I. Contract services that are not services for purposes of Tax Law section 5-a**

(Mark an X in the box if this statement is applicable. If you mark this box, you do not have to complete Parts II through V.)

- ☐ The requirements of Tax Law section 5-a do not apply because the subject matter of the contract concerns the performance of services which are not services within the meaning of Tax Law section 5-a.  
(If you did not mark the box next to the statement in Part I, mark an X next to the applicable statement in Parts II through V.)

**Part II. Contractor registration status**

- ☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law.
- ☐ As of the date of this certification, the contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

**Part III. Affiliate registration status**

- ☐ As of the date of this certification, the contractor does not have any affiliates.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made, and each affiliate exceeding the \$300,000 sales threshold during such periods is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address, and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- ☐ To the best of the contractor's knowledge, the contractor has one or more affiliates and, as of the date of this certification, each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.



**Part IV. Subcontractor registration status**

- ☐ As of the date of this certification, the contractor does not have any subcontractors.
- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification, it has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that it is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each subcontractor exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

**Part V. Subcontractor affiliate registration status**

- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it does not have any affiliates
- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor of whether or not, as of the date of this certification it has any affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August and November which immediately precede the quarterly period in which this certification is made. Each subcontractor informing the contractor that it has one or more affiliates having made sales in excess of the \$300,000 threshold during such periods has further informed the contractor that each such affiliate is registered for New York State and local sales and compensating use tax purposes with the Commissioner of Taxation and Finance pursuant to sections 1134 and 1253 of the Tax Law. The contractor has listed on Schedule A of this certification the name, address and identification number of each affiliate exceeding the \$300,000 sales threshold during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.
- ☐ The contractor has one or more subcontractors, and each subcontractor has informed the contractor that, as of the date of this certification, it has no affiliate having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made.

Sworn to this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(title)

**Individual, Corporation, Partnership, or LLC Acknowledgment**

STATE OF \_\_\_\_\_ }  
 : SS.:  
 COUNTY OF \_\_\_\_\_ }

On the day \_\_\_\_\_ of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_  
 known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose  
 and say that \_he resides at \_\_\_\_\_ ,

Town of \_\_\_\_\_ ,

County of \_\_\_\_\_ ,

State of \_\_\_\_\_ ; and further that:

[Mark an **X** in the appropriate box and complete the accompanying statement.]

☐ (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): \_he is the \_\_\_\_\_  
 of \_\_\_\_\_ , the corporation described in said instrument; that, by authority of the Board  
 of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation  
 for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the  
 name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): \_he is the \_\_\_\_\_  
 of \_\_\_\_\_ , the partnership described in said instrument; that, by the terms of said  
 partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set  
 forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on  
 behalf of said partnership as the act and deed of said partnership.

☐ (If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_  
 LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing  
 instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that  
 authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as  
 the act and deed of said limited liability company.

\_\_\_\_\_  
 Notary Public

Registration No.

**Schedule A - List of affiliates, subcontractors, and affiliates of subcontractors**

A Relationship to Contractor	B Name	C Address	D ID Number	E Sales Tax ID Number	F Proof of Registration

Column A - Enter **C** if the contractor; do not complete columns C, D, and E. Enter **A** if an affiliate of the contractor; **S** if a subcontractor; or **SA** if an affiliate of a subcontractor, and complete columns B through F.

Column B - Name - If person is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State. If person is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If person has a different DBA (doing business as) name, enter that name as well.

Column C - Address - Enter the street address of person's principal place of business. Do not enter a PO box.

Column D - ID number - Enter the federal identification number assigned to the person or person's business, as applicable.

Column E - Sales tax ID number - Enter only if different from federal ID number in column D.

Column F - Enter **CA** if a paper copy of the certificate of authority is attached; or **RC** if person is registered with DTF and has confirmed this status with DTF.

**Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law, and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

## Instructions

### General information

On August 20, 2004, New York State enacted section 5-a of the Tax Law requiring persons awarded contracts valued at more than \$15,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person makes, or has made, aggregate sales delivered within New York State of more than \$300,000 during the four quarterly periods ending on the last day of February, May, August, and November which immediately precede the quarterly period in which this certification is made. A contractor must use Form ST-220, *Contractor Certification*, to make this certification before the contract may be approved by the Office of the State Comptroller (OSC), or other contract approver if OSC is not required to approve the contract.

This statute applies to contracts resulting from solicitations to purchase issued by governmental entities on or after January 1, 2005. In the case of contracts resulting from issuance of an invitation for bid (IFB) or a request for proposal (RFP), the statute would apply if the IFB or RFP was first issued on or after January 1, 2005. The statute would not apply if the bid document was first issued before January 1, 2005, even if the bid document was amended, or the resulting contract was awarded, approved, amended, or extended after January 1, 2005.

The statute does not apply to purchases from preferred sources. For additional information, please see Publication 222, *Questions and Answers Concerning Tax Law Section 5-a*.

### Definition of terms associated with section 5-a

The following is a partial list. Please see Publication 222 for additional information.

A *contractor* is defined as a person awarded a contract by a covered agency.

The term *person* is defined as any entity in business for either profit or not-for-profit purposes and can refer to an individual, partnership, limited liability company, society, association, joint stock company, or corporation.

A *covered agency* is defined as New York State or any department, board, bureau, commission, division, office, council or agency of New York State; public authorities and public benefit corporations. The State Legislature, the judiciary, Department of Law, Office of State Comptroller, State Education Department, State University of New York and the senior colleges of City University of New York are included in this definition.

An *affiliate* is an entity which, through stock ownership or any other affiliation, directly, indirectly or constructively, controls another entity, is controlled by another entity, or is, along with another entity, under the control of a common parent company.

A *subcontractor* is an entity specifically engaged by a contractor or another subcontractor to provide commodities or perform services necessary to allow a contractor to fulfill a particular contract with a covered agency.

*Commodities* means, other than with respect to contracts for State printing, material goods, supplies, products, construction items or other standard articles of commerce other than technology which are the subject of any purchase or other exchange.

*Tangible personal property* means physical personal property, of any nature, that has a material existence and is perceptible to the human senses. Tangible personal property includes, without limitation: (1) raw materials, such as wood, metal, rubber and minerals; (2) manufactured items, such as gasoline, oil, diesel motor fuel and kero-jet fuel, chemicals, jewelry, furniture, machinery and equipment, parts, tools, supplies, computers, clothing, motor vehicles, boats, yachts, appliances, lighting fixtures, building materials; (3) pre-written off-the-shelf software; (4) artistic items such as sketches, paintings, photographs, moving picture films and recordings; (5) animals, trees, shrubs, plants and seeds; (6) bottled water, soda and beer; (7) candy and confections; (8) cigarettes and tobacco products; (9) cosmetics and toiletries; (10) coins and other numismatic items, when purchased for purposes other than for use as a medium of exchange; (11) postage stamps, when purchased for purposes other than mailing; and (12) precious metals in the form of bullion, ingots, wafers and other forms.

### Completing Form ST-220 Identification information

**Contractor name:** Enter the exact legal name of the person or entity who is contracting to provide commodities or services to a covered agency of New York State. This is the name registered with the New York Department of State.

**Contractor's principal place of business:** Enter a street address, not a PO box number.

**Mailing address:** Enter the address where contractor receives mail, if different than the principal place of business.

**Contracting state agency:** Enter the state agency awarding the contract to the contractor.

**Certification statement:** If the contractor is a corporation, the statement must be completed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the corporation. If the contractor is a partnership, the statement must be completed by a partner or person authorized by the partnership. If the contractor is a limited liability company, the statement must be completed by a member of the LLC and be authorized by the LLC.

### Part I - Contract services not pursuant to Tax Law section 5-a

If the services to be performed under the contract are not services within the meaning of Tax Law section 5-a, mark an **X**. You do not have to complete Parts II through V. You must sign and have the certification acknowledged.

For procurement law purposes, *services* means, other than with respect to contracts for State printing, the performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. For procurement law purposes, technology is a service. The term *services* for procurement law purposes does not apply to contracts for architectural, engineering or surveying services, or to contracts with not-for-profit organizations approved in accordance with Article eleven-B of the State Finance Law.

The term *taxable services* for New York State and local sales and compensating use tax law purposes includes, but is not limited to: 1) providing information by printed, mimeographed or multigraphed matter or by duplicating written or printed manner in any other

manner; 2) processing, assembling, fabricating, printing or imprinting tangible personal property furnished by a customer who did not purchase the tangible personal property for resale; 3) installing, maintaining, servicing, or repairing tangible personal property that is not held for sale by the purchaser of the service in the regular course of business (for example, servicing automobiles, installing appliances, and repairing radio and television sets); 4) storing tangible personal property that is not being held for sale; 5) renting safe deposit boxes, vaults, and similar storage facilities; 6) maintaining, servicing, or repairing real property both inside and outside buildings (for example, cleaning, painting, gardening, snow plowing, trash removal, and general repairs); 7) providing parking, garaging, or storing services for motor vehicles; 8) interior decorating and designing; 9) protective or detective services; and 10) entertainment or information services provided by means of telephony or telegraphy.

## **Parts II through V**

If the contract is covered under Tax Law section 5-a, you must mark an **X** in one box in each of these parts. You must also sign and have the certification acknowledged, and complete Schedule A.

## **Schedule A**

### **Column A - Relationship to the contractor**

The contractor should enter a **C**. It is not necessary for the contractor to complete columns C through E since this information has been provided on page 1.

If the person listed in column B is an affiliate of the contractor, enter an **A**; if a subcontractor, enter an **S**, if an affiliate of a subcontractor, enter **SA**.

### **Column B - Name**

Enter the exact legal name as registered with the New York Department of State of each corporation or limited liability company. If the person is a partnership or sole proprietor, enter each partner's or the owner's given name. If the person uses a different name or DBA (doing business as), enter that name as well.

### **Column C - Address**

Enter the street address of the person's principal place of business. Do not enter a PO box.

### **Column D - ID number**

If the person listed in column B is an individual, enter the social security number of that person. Otherwise enter the employer identification number (EIN) assigned to the person.

### **Column E - Sales tax ID number**

Enter the sales tax identification number, if different from the federal identification.

### **Column F - Proof of registration**

Enter **CA** and attach a copy of the certificate of authority for the person.

If the certificate of authority is not readily available and if the person is registered with the Department of Taxation and Finance and has confirmed this status with the DTP, enter **RC**.

**Return a signed and acknowledged original Form ST-220, and a copy, with the contract to the procuring state agency.**

## 8. Appendices

The following will be incorporated into any contract resulting from this Request for Proposal. This Request for Proposal will, itself, be referenced as an appendix of the contract.

### 8.1 Cover page and "State of New York Agreement"

### 8.2 APPENDIX A - Standard Clauses for All New York State Contracts

### 8.3 APPENDIX B - Request for Proposal

### 8.4 APPENDIX C - Proposal

The offeror's proposal (if selected for award), including all proposal requirements.

### 8.5 APPENDIX D - General Specifications

Please note: Appendix D is currently under revision to incorporate language associated with recently enacted State Finance Law 139. This revised appendix will be incorporated into the resulting contract.

### 8.6 APPENDIX E

Unless the CONTRACTOR is a political subdivision of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:

#### 8.6.1 Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:

8.6.1.1 Certificate of Workers' Compensation Insurance, on the Workers' Compensation Board form C-105.2 or the State Insurance Fund Form U-26.3 (naming the Department of Health, Corning Tower Rm. 1315, Albany 12237-0016), or

8.6.1.2 Affidavit Certifying That Compensation Has Been Secured, form SI-12 or GSI-105.21, or

8.6.1.3 Statement That Applicant Does Not Require Workers' Compensation or Disability Benefits Coverage, form WC/DB-100 or WC/DB - 101, completed for workers' compensation; and

#### 8.6.2 Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:

8.6.2.1 Certificate of Insurance, form DB-120.1, or

8.6.2.2 Notice of Qualification as Self Insurer Under Disability Benefits Law, form DB-155, or

8.6.2.3 Statement That Applicant Does Not Require Workers' Compensation or Disability Benefits Coverage, form WC/DB-100 or WC/DB - 101, completed for disability benefits insurance.

### 8.7 APPENDIX H - Federal Health Insurance Portability and Accountability Act Business Associate Agreement (HIPAA).

# MISCELLANEOUS / CONSULTANT SERVICES

STATE AGENCY (Name and Address):

NYS COMPTROLLER'S NUMBER:

ORIGINATING AGENCY CODE:12000

CONTRACTOR (Name and Address):

TYPE OF PROGRAM(S):

CHARITIES REGISTRATION NUMBER:

CONTRACT TERM

FROM:

FEDERAL TAX IDENTIFICATION NUMBER:

TO:

MUNICIPALITY NO. (if applicable):

FUNDING AMOUNT FOR CONTRACT TERM:

STATUS:

CONTRACTOR IS ( ) IS NOT ( ) A SECTARIAN ENTITY

CONTRACTOR IS ( ) IS NOT ( ) A NOT-FOR-PROFIT ORGANIZATION

( ) IF MARKED HERE, THIS CONTRACT'S RENEWABLE FOR \_\_\_ ADDITIONAL ONE-YEAR PERIOD(S) AT THE SOLE OPTION OF THE STATE AND SUBJECT TO APPROVAL OF THE OFFICE OF THE STATE COMPTROLLER.

CONTRACTOR IS ( ) IS NOT ( ) A N Y STATE BUSINESS ENTERPRISE

BID OPENING DATE:

## APPENDICES ATTACHED AND PART OF THIS AGREEMENT

<u>X</u>	APPENDIX A	Standard Clauses as required by the Attorney General for all State Contracts.
<u>X</u>	APPENDIX B	Request For Proposal (RFP)
<u>X</u>	APPENDIX C	Proposal
<u>X</u>	APPENDIX D	General Specifications
<u>X</u>	APPENDIX E-1	Proof of Workers' Compensation Coverage
<u>X</u>	APPENDIX E-2	Proof of Disability Insurance Coverage
—	APPENDIX H	Federal Health Insurance Portability and Accountability Act Business Associate Agreement
<u>X</u>	APPENDIX X	Modification Agreement Form (to accompany modified appendices for changes in term or consideration on an existing period or for renewal periods)
—	APPENDIX —:	
—	APPENDIX —:	

IN WITNESS THEREOF, the parties hereto have executed or approved this AGREEMENT on the dates below their signatures.

CONTRACTOR

STATE AGENCY

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name

Printed Name

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

State Agency Certification:

"In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

STATE OF NEW YORK )

)SS.:

County of \_\_\_\_\_)

On the \_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me personally appeared \_\_\_\_\_,  
to me known, who being by me duly sworn, did depose and say that he/she resides at  
that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation  
described herein which executed the foregoing instrument; and that he/she signed his/her name  
thereto by order of the board of directors of said corporation.  
(Notary)

ATTORNEY GENERAL'S SIGNATURE

STATE COMPTROLLER'S SIGNATURE

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



STATE OF NEW YORK  
AGREEMENT

This AGREEMENT is hereby made by and between the State of New York agency (STATE) and the public or private agency (CONTRACTOR) identified on the face page hereof.

WITNESSETH:

WHEREAS, the STATE has formally requested contractors to submit bid proposals for the project described in Appendix B for which bids were opened on the date noted on the face pages of this AGREEMENT; and

WHEREAS, the STATE has determined that the CONTRACTOR is the successful bidder, and the CONTRACTOR covenants that it is willing and able to undertake the services and provide the necessary materials, labor and equipment in connection therewith;

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the covenants and obligations moving to each party hereto from the other, the parties hereto do hereby agree as follows:

I. Conditions of Agreement

- A. This AGREEMENT incorporates the face pages attached and all of the marked appendices identified on the face page hereof.
- B. The maximum compensation for the contract term of this AGREEMENT shall not exceed the amount specified on the face page hereof.
- C. This AGREEMENT may be renewed for additional periods (PERIOD), as specified on the face page hereof.
- D. To exercise any renewal option of this AGREEMENT, the parties shall prepare new appendices, to the extent that any require modification, and a Modification Agreement (the attached Appendix X is the blank form to be used). Any terms of this AGREEMENT not modified shall remain in effect for each PERIOD of the AGREEMENT.

The modification agreement is subject to the approval of the Office of the State Comptroller.

- E. Appendix A (Standard Clauses as required by the Attorney General for all State contracts) takes precedence over all other parts of the AGREEMENT.
- F. For the purposes of this AGREEMENT, the terms "Request For Proposal" and "RFP" include all Appendix B documents as marked on the face page hereof.
- G. For the purposes of this AGREEMENT, the term "Proposal" includes all Appendix C documents as marked on the face page hereof.

II. Payment and Reporting

- A. The CONTRACTOR shall submit invoices to the STATE's designated payment office:
  - .
  - .
- B. Payment of such invoices by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law.

### III. Term of Contract

- A. This agreement shall be effective upon approval of the NYS Office of the State Comptroller.

<or insert other time period, and reference renewal option, if required>

<Note: The contract period must agree with that stated in the Contract Reporter notice.>

- B. This Agreement may be terminated by mutual written agreement of the contracting parties.
- C. This Agreement may be terminated by the Department for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachments hereto, provided that the Department shall give the contractor written notice via registered or certified mail, return receipt requested, or shall deliver same by hand-receiving Contractor's receipt therefor, such written notice to specify the Contractor's failure and the termination of this Agreement. Termination shall be effective ten (10) business days from receipt of such notice, established by the receipt returned to the Department. The Contractor agrees to incur no new obligations nor to claim for any expenses made after receipt of the notification of termination.
- D. This Agreement may be deemed terminated immediately at the option of the Department upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligations by the Department to the Contractor.

### IV. Proof of Coverage

Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the CONTRACTOR's insurance carrier and/or the Workers' Compensation Board, of coverage for:

- A. Workers' Compensation, for which one of the following is incorporated into this contract as Appendix E-1:
1. Certificate of Workers' Compensation Insurance, on the Workers' Compensation Board form C-105.2 or the State Insurance Fund form U-26.3 (naming the Dept. of Health, Corning Tower Rm. 1315, Albany, 12237-0016), or
  2. Affidavit Certifying That Compensation Has Been Secured, form SI-12, or GSI 105.2, or
  3. Statement that applicant does not require workers' compensation or disability benefits coverage, form WC/DB-100 or WC/DB-101, completed for workers' compensation; and
- B. Disability Benefits coverage, for which one of the following is incorporated into this contract as Appendix E-2:
1. Certificate of Insurance, form DB-120.1, or
  2. Notice of Qualification as Self Insurer Under Disability Benefits Law, form DB-155, or
  3. Statement that applicant does not require workers' compensation or disability benefits coverage, form WC/DB-100 or WC/DB-101, completed for disability benefits insurance.

# APPENDIX X

Agency Code \_\_\_\_\_  
Period \_\_\_\_\_

Contract No. \_\_\_\_\_  
Funding Amount for Period \_\_\_\_\_

This is an AGREEMENT between THE STATE OF NEW YORK, acting by and through \_\_\_\_\_, having its principal office at \_\_\_\_\_, hereinafter referred to as the STATE), and \_\_\_\_\_ (hereinafter referred to as the CONTRACTOR), for modification of Contract Number as amended in attached Appendix(ices) \_\_\_\_\_.

All other provisions of said AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as of the dates appearing under their signatures.

CONTRACTOR SIGNATURE \_\_\_\_\_

STATE AGENCY SIGNATURE \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name

Printed Name

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

State Agency Certification:  
"In addition to the acceptance of this contract,  
I also certify that original copies of this  
signature page will be attached to all other  
exact copies of this contract."

STATE OF NEW YORK )  
 ) SS.:  
County of \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, to me known, who being by me duly sworn, did depose and say that he/she resides at that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described herein which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the board of directors of said corporation.  
(Notary)

STATE COMPTROLLER'S SIGNATURE

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **APPENDIX A**

### **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a)

discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus

any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or

any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including

the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor

Albany, New York 12245  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

APPENDIX D  
GENERAL SPECIFICATIONS

- A. By signing Form E each offeror attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that:

All specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Request for Proposal. Anything which is not expressly set forth in the specification, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.

- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, telegram, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this proposal and the contract at any time that the Department deems the successful offeror to be unable or incapable of performing the work to the satisfaction of the Department and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable and if the cost thereof exceeds the amount of the bid, the successful offeror and its surety be liable to the State of New York for any excess cost on account thereof.
- D. Each offeror is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowances or concession to a offeror for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.
- G. The successful offeror will be required to complete the entire work, or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.
- H. Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses

and permits as may be required within such jurisdiction.

I. Non-Collusive Bidding

By submission of this proposal, each offeror and each person signing on behalf of any offeror certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

- a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
- b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
- c. No attempt has been made or will be made by the offeror to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTE: Chapter 675 of the Laws of New York for 1966 provides that every bid made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the foregoing statement subscribed by the offeror and affirmed by such offeror as true under penalties of perjury.

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided however, that if in any case the offeror cannot make the foregoing certification, the offeror shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (b) and (c) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made or its designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a offeror has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.



Any bid made to the State or any public department, agency or official thereof by a corporate offeror for work or services performed or to be performed or goods, sold or to be sold, where competitive bidding is required by statute, rule or regulation and where such bid contains the certification set forth above shall be deemed to have been authorized by the board of directors of the offeror, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

- J. An offeror may be disqualified from receiving awards if such offeror or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its or its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the offeror distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. Work for Hire Contract  
Any contract entered into resultant from this request for proposal will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed or included in the application software provided to the Department as a part of this contract.
- M. Technology Purchases Notification -- The following provisions apply if this Request for Proposal (RFP) seeks proposals for "Technology"
  - 1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.
  - 2. If this RFP results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD SELECTION, this RFP and all responses thereto are subject to review by the New York State Office for Technology.
  - 3. Any contract entered into pursuant to an award of this RFP shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this RFP into the resulting

contract also incorporates this provision in the contract.

4. The responses to this RFP must include a solution to effectively handle the turn of the century issues related to the change from the year 1999 to 2000.

## N. YEAR 2000 WARRANTY

### 1. Definitions

For purposes of this warranty, the following definitions shall apply:

- a. Product shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g. consulting, systems integration, code or data conversion or data entry, the term Product shall include resulting deliverables.
- b. Vendor's Product shall include all Product delivered under this Agreement by Vendor other than Third Party Product.
- c. Third Party Product shall include products manufactured or developed by a corporate entity independent from Vendor and provided by Vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. Third Party Product does not include product where Vendor is: a) corporate subsidiary or affiliate of the third party manufacturer/developer; and/or b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

### 2. Warranty Disclosure

At the time of bid, Product order or Product quote, Vendor is required to disclose the following information in writing to Authorized User:

- a. For Vendor Product and for Products (including, but not limited to, Vendor and/or Third Party Products and/or Authorized User's Installed Product) which have been specified to perform as a system: Compliance or non-compliance of the Products individually or as a system with the Warranty Statement set forth below; and
- b. For Third Party Product Not Specified as Part of a System: Third Party Manufacturer's statement of compliance or non-compliance of any Third Party Product being delivered with Third Party Manufacturer/Developer's Year 2000 warranty. If such Third Party Product is represented by Third Party Manufacturer/Developer as compliant with Third Party

Manufacturer/Developer's Year 2000 Warranty, Vendor shall pass through said third party warranty from the third party manufacturer to the Authorized User but shall not be liable for the testing or verification of Third Party's compliance statement.

An absence or failure to furnish the required written warranty disclosure shall be deemed a statement of compliance of the product(s) or system(s) in question with the year 2000 warranty statement set forth below.

### 3. Warranty Statement

Year 2000 warranty compliance shall be defined in accordance with the following warranty statement:

Vendor warrants that Product(s) furnished pursuant to this Agreement shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Where a purchase requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

In the event of any breach of this warranty, Vendor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User's ongoing business processes, time being of the essence, at Vendor's sole cost and expense. This warranty does not extend to correction of Authorized User's errors in data entry or data conversion.

This warranty shall survive beyond termination or expiration of the Agreement.

Nothing in this warranty shall be construed to limit any rights or remedies otherwise available under this Agreement.

O. Subcontracting by the contractor shall not be permitted except by prior written approval and knowledge of the Department of Health.

P. Superintendence by contractor

The contractor shall have a representative to provide supervision of the work which contractor employees are performing to ensure complete and satisfactory performance with the terms of the contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the contractor.

Q. Sufficiency of Personnel and Equipment

If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the contractor to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.

R. Experience Requirements

The contractor shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The contractor shall submit at least two references to substantiate these qualifications.

S. Contract Amendments

This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

The contractor shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department of Health and without prior approval in writing of the amount of compensation for such changes.

T. Provisions Upon Default

1. The services to be performed by the contractor shall be at all times subject to the direction and control of the Department as to all matters arising in connection with or relating to this Agreement.
2. In the event that the contractor, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the contractor
3. If, in the judgment of the Department of Health, the contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the contractor. In such case the contractor shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.

U. Termination Provision

Upon termination of this agreement, the following shall occur:

- ❑ contractor shall make available to the State for examination all data, records and reports relating to this contract; and
- ❑ Except as otherwise provided in the contract, the liability of the State for payments to the contractor and the liability of the contractor for services hereunder shall cease.

V. Conflicts

If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to (c) the work required to be done in every such situation, the contractor shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

W. MINORITY AND WOMEN OWNED BUSINESS POLICY STATEMENT

The New York State Department of Health recognizes the need to take affirmative action to ensure that Minority and Women Owned Business Enterprises are given the opportunity to participate in the performance of the Department of Health's contracting program. This opportunity for full participation in our free enterprise system by traditionally, socially and economically disadvantaged persons is essential to obtain social and economic equality and improve the functioning of the State economy.

It is the intention of the New York State Department of Health to fully execute the mandate of Executive Law, Article 15-A and provide Minority and Women Owned Business Enterprises with equal opportunity to bid on contracts awarded by this agency in accordance with the State Finance Law.

To implement this affirmative action policy statement, the contractor agrees to file with the Department of Health within 10 days of notice of award, a staffing plan of the anticipated work force to be utilized on this contract or, where required, information on the contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the Department. The form of the staffing plan shall be supplied by the Department.

After an award of this contract, the contractor agrees to submit to the Department a work force utilization report, in a form and manner required by the Department, of the work force actually utilized on this contract, broken down by specified ethnic background, gender and Federal occupational categories or other appropriate

categories specified by the Department.

X. Contract Insurance Requirements

a. The successful offeror must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this proposal and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this proposal and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful offeror shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:

1. A policy covering the obligations of the successful offeror in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful offeror procures such policy and maintains it until acceptance of the work offeror (reference Appendix E).
2. Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.
  - a. Contractor's Liability Insurance issued to and covering the liability of the successful offeror with respect to all work performed by it under this proposal and the contract.
  - b. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this proposal and the contract, by the successful offeror or by its subcontractors, including omissions and supervisory acts of the State.
  - c. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to

all operations under this proposal and the contract, by the successful offeror or by its subcontractors, including omissions and supervisory acts of the State.

Y. Certification Regarding Debarment and Suspension

Regulations of the Department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

Pursuant to the above-cited regulations, the New York State Department of Health (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995), and the Department of Health must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

1) APPENDIX B TO PART 76-CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

- a) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c) The prospective lower tier participant shall provide immediate written

notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

- d) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered Transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
- g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of parties Excluded from Federal Procurement and Non-procurement Programs.
- h) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred,



ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2) *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions*

- a) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily exclude from participation in this transaction by any Federal department agency.
- b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Z. Confidentiality Clauses

- 1. Any materials, articles, papers, etc., developed by the CONTRACTOR under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the STATE for conformity with the policies and guidelines for the New York State Department of Health prior to dissemination and/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the CONTRACTOR shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.
- 2. Any publishable or otherwise reproducible material developed under or in the course of performing this AGREEMENT, dealing with any aspect of performance under this AGREEMENT, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the STATE, and shall not be published or otherwise disseminated by the CONTRACTOR to any other party unless prior written approval is secured from the STATE or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the CONTRACTOR resulting from any such publication shall belong to and be paid over to the STATE. The STATE shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
- 3. No report, document or other data produced in whole or in part with the funds

provided under this AGREEMENT may be copyrighted by the CONTRACTOR or any of its employees, nor shall any notice of copyright be registered by the CONTRACTOR or any of its employees in connection with any report, document or other data developed pursuant to this AGREEMENT.

4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this AGREEMENT the CONTRACTOR shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this AGREEMENT. The CONTRACTOR shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
5. The CONTRACTOR, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this AGREEMENT, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.
6. All subcontracts shall contain provisions specifying:
  1. that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT, and
  2. that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the AGREEMENT between the STATE and the CONTRACTOR.

AA. Provisions Related to New York State Executive Order Number 127

1. The CONTRACTOR certifies that all information provided to the STATE with respect to New York State Executive Order Number 127, signed by Governor Pataki on June 16, 2003, is complete, true, and accurate.
2. The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR, in accordance with New York State Executive Order Number 127, was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

## **Appendix H**

### **Federal Health Insurance Portability and Accountability Act ("HIPAA") Business Associate Agreement ("Agreement") Governing Privacy and Security**

#### **I. Definitions:**

- (a) Business Associate shall mean the CONTRACTOR.
- (b) Covered Program shall mean the STATE.
- (c) Other terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations, including those at 45 CFR Parts 160 and 164.

#### **II. Obligations and Activities of the Business Associate:**

- (a) The Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
- (b) The Business Associate agrees to use the appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement and to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic Protected Health Information that it creates receives, maintains or transmits on behalf of the Covered Entity pursuant to this Agreement.
- (c) The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected Health Information by the Business Associate in violation of the requirements of this Agreement.
- (d) The Business Associate agrees to report to the Covered Program, any use or disclosure of the Protected Health Information not provided for by this Agreement, as soon as reasonably practicable of which it becomes aware. The Business Associate also agrees to report to the Covered Entity any security incident of which it becomes aware.
- (e) The Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Business Associate on behalf of the Covered Program agrees to the same restrictions and conditions that apply

through this Agreement to the Business Associate with respect to such information.

- (f) The Business Associate agrees to provide access, at the request of the Covered Program, and in the time and manner designated by the Covered Program, to Protected Health Information in a Designated Record Set, to the Covered Program or, as directed by the Covered Program, to an Individual in order to meet the requirements under 45 CFR 164.524, if the business associate has protected health information in a designated record set.
- (g) The Business Associate agrees to make any amendment(s) to Protected Health Information in a designated record set that the Covered Program directs or agrees to pursuant to 45 CFR 164.526 at the request of the Covered Program or an Individual, and in the time and manner designated by Covered Program, if the business associate has protected health information in a designated record set.
- (h) The Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Business Associate on behalf of, the Covered Program available to the Covered Program, or to the Secretary of Health and Human Services, in a time and manner designated by the Covered Program or the Secretary, for purposes of the Secretary determining the Covered Program's compliance with the Privacy Rule.
- (i) The Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (j) The Business Associate agrees to provide to the Covered Program or an Individual, in time and manner designated by Covered Program, information collected in accordance with this Agreement, to permit Covered Program to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

### III. Permitted Uses and Disclosures by Business Associate

#### (a) General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, the Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the Covered Program as specified in the Agreement to which this is an addendum, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Program.

(b) Specific Use and Disclosure Provisions:

- (1) Except as otherwise limited in this Agreement, the Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (2) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the business associate or to carry out its legal responsibilities and to provide Data Aggregation services to Covered Program as permitted by 45 CFR 164.504(e)(2)(i)(B). Data Aggregation includes the combining of protected information created or received by a business associate through its activities under this contract with other information gained from other sources.
- (3) The Business Associate may use Protected Health Information to report violations of law to appropriate federal and State authorities, consistent with 45 CFR '164.502(j)(1).

IV. Obligations of Covered Program

Provisions for the Covered Program To Inform the Business Associate of Privacy Practices and Restrictions

- (a) The Covered Program shall notify the Business Associate of any limitation(s) in its notice of privacy practices of the Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of Protected Health Information.
- (b) The Covered Program shall notify the Business Associate of any changes in, or revocation of, permission by the Individual to use or disclose Protected Health Information, to the extent that such changes may affect the Business Associate's use or disclosure of Protected Health Information.
- (c) The Covered Program shall notify the Business Associate of any restriction to the use or disclosure of Protected Health Information that the Covered Program has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of Protected Health Information.

V. Permissible Requests by Covered Program

The Covered Program shall not request the Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Program, except if the Business Associate will use or disclose protected health information for, and the contract includes provisions for, data aggregation or management and administrative activities of Business Associate.

VI. Term and Termination

- (a) *Term.* The Term of this Agreement shall be effective during the dates noted on page one of this agreement, after which time all of the Protected Health Information provided by Covered Program to Business Associate, or created or received by Business Associate on behalf of Covered Program, shall be destroyed or returned to Covered Program, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in The Agreement.
- (b) *Termination for Cause.* Upon the Covered Program's knowledge of a material breach by Business Associate, Covered Program may provide an opportunity for the Business Associate to cure the breach and end the violation or may terminate this Agreement and the master Agreement if the Business Associate does not cure the breach and end the violation within the time specified by Covered Program, or the Covered Program may immediately terminate this Agreement and the master Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible.
- (c) *Effect of Termination.*
  - (1) Except as provided in paragraph (c)(2) below, upon termination of this Agreement, for any reason, the Business Associate shall return or destroy all Protected Health Information received from the Covered Program, or created or received by the Business Associate on behalf of the Covered Program. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the Protected Health Information.
  - (2) In the event that the Business Associate determines that returning or destroying the Protected Health Information is infeasible, the Business Associate shall provide to the Covered Program notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, the Business Associate shall extend the protections of this Agreement to such Protected Health Information and

limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## VII. Violations

- (a) It is further agreed that any violation of this agreement may cause irreparable harm to the State, therefore the State may seek any other remedy, including an injunction or specific performance for such harm, without bond, security or necessity of demonstrating actual damages.
- (b) The business associate shall indemnify and hold the State harmless against all claims and costs resulting from acts/omissions of the business associate in connection with the business associate's obligations under this agreement.

## *Miscellaneous*

- (a) *Regulatory References.* A reference in this Agreement to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- (b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Program to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- (c) *Survival.* The respective rights and obligations of the Business Associate under Section VI of this Agreement shall survive the termination of this Agreement.
- (d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Program to comply with the HIPAA Privacy Rule.
- (e) If anything in this agreement conflicts with a provision of any other agreement on this matter, this agreement is controlling.
- (f) **HIV/AIDS.** If HIV/AIDS information is to be disclosed under this agreement, the business associate acknowledges that it has been informed of the confidentiality requirements of Public Health Law Article 27-F.